JURIES - 1940

Civil Liberties

NOV 30 1940

The morning paper rests on our desk and again our friend Justice Hugo Black comes to the rescue of constitutional liberties. Down at Houston, Texas, a Negro charged with the crime of rape was tried in a county where Negroes have been systematically excluded from jury service for many years. The court found that while a minimum of from 3,000 to 6,000 Negroes measure up to the qualifications of Texas standards, required for jury service, only five had served on grand juries in the past nine years.

The Black Dispatch

The question which concerned the high court was not the innocence or guilt of the defendant. The proposition the court acted upon was far more fundamental regarding citizenship. The court in this case took the position that the defendant was entitled to honest indictment before he was brought to trial.

It cannot be maintained that a black man has been honestly and properly indicted in courts where Negroes are barred from jury service. One may talk about fair trials and justice in the courts, but the milk of human kindness will never obtain in American court rooms for black people until black people themselves sit in the jury box.

Oklahoma City, Okla.

The democratic ideal is wharped and twisted when one segment of the population may sit in judgement upon another group barred from the same right and privilege. A white juryman will come nearer rendering justice to a black defendant if as he sits upon a black man's case there rests in his mind the fact that tomorrow some relative of this black man may sit in judgement upon him.

Negroes and all minority groups should be interested in securing for themselves their constitutional liberties. In Oklahoma City there was recently held a conference having for its purpose the protection of those liberties guaranteed citizens in the Bill of Rights. Immediately there was a great howl rendered to high heaven by those who ignore constitutional liberties, denouncing those who formed this group as Communists and arch enemies of Americanism.

Too many Negroes are scared by such fulminations. They dash away from the type and character of organization which means most to them. Justice Black in his Monday decision pointed to the cancer that is devouring the heart of the democratic process.

Take the right to vote. Negroes have been denied this right for almost fifty years. Most folk thought it was all right and many leading Southerners justified it. But the spirit to disfranchise has spread. It is not now confined to Negroes. Today in many states the ballot is being unlawfully withheld from Socialists, Communists, Socialist-Labor, Prohibition and other independent groups. In the South through poll tax laws millions of poor whites are today disfranchised.

In some sections vigilante groups, ignoring constitutional guarantees, rushing into homes violating the search and seizure clauses of the federal charter. This is nothing new to Negroes but it comes as a great shock to whites who hitherto have felt themselves secure.

In Choctaw County Oklahoma a Negro during the present year charged with crime was clubbed and beaten into an alleged confession. The "torture" clauses of the Bill of Rights were completely ignored, and in Oklahoma County there is serious thought that excessive bail has been imposed upon helpless defendants. These are the constitutional liberties which should always be preserved and protected.

The right of petition is certainly threatened when unofficial emmisaries of government intimidate citizens as did alleged agents of the Dies Committee recently, when members of a Civil Liberties group in Oklahoma City were hailed before a committee and commanded to bring books and papers of an organization with which these citizens had no connection.

Go get the Bill of Rights and read it. This will give you orientation. Study carefully whether or not all of the grants of the Constitution are yours. Do not let anybody fool you. This is a government of laws and not of men. You will find if you study your community life carefully that over and above the law some little Facist group have set themselves. They insist that they are the law and whatever interpretation they place upon the Constitution must prevail.

It is refreshing to know that in the Supreme Court of the United States citizens may find men with the social outlook and political norm of Justice Hugo Black. The rights of all minority groups in this Republic are safe in his hands.

Incidentally, the presence of Justice Hugo Black on the Supreme Court should teach the American Negro a lesson in common sense. Every election some one rushes to the fore opposing elevation of southern white men to high office. When John Nance Garner was a candidate for Vice President Negro America trembled. We were told the man from Uvalde would turn back the clock of progress half a century. Garner became the Vice President and during his occupancy of high position Negroes' rights were more securely safeguarded than ever before.

When it was heralded over the nation that Hugo Black, of Alabama and an acknowledged former member of the Ku Klux Klan was to be elevated to the Supreme Court, Negroes again trembled. They trembled and forgot that the greatest decisions in favor of black people have been rendered by Justices coming from the Southern section of the United States.

NOV 30 1940

This publication endorsed the selection of Justice Black and said we believed President Roosevelt knew what he was doing in elevating him to this high post. The many fine decisions this great man has rendered in favor of human rights and minority groups fully justifies our prophecy. We suppose the reactionary groups in America will soon be calling Justice Black a Communist.

In this connection it would be well to note that Thomas Jefferson in his day was called an infidel and a Communist solely because of his liberal views, just as the men and women who join such organizations as the Oklahoma Youth Legislature, Civil Liberties Federation and N. A. A. C. P. are likewise indicted.

A SIGNIFICANT DECISION

DEC - 5 1940

IN an unanimous decision, the Supreme Court of the United States last week reversed the conviction of a Negro sentenced to life imprisonment in Texas on the grounds that there had *been discrimination* against Negroes in Grand Jury selection.

The Christian Index

Justice Black who wrote the sweeping decision stated that "chance and accident alone could hardly have brought about the listing of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service."

Justice Black further pointed out that the Texas Clerk had testified that from 1931-1938 inclusive, only five of 384 grand jurors were Negroes. A minimum of 3,000 to 6,000 Negroes, he said meet the requirements for Grand Jury service.

Jackson, Tennessee

This is not, of course, the first time the Supreme Court has clearly and forcefully laid down these clear constitutional principles. But this case further emphasizes what could be expected to happen in any court on the same grounds as those resulting in the Texas reversal.

Sanford, Fla. Herald
December 2, 1940

Racial and Class Consciousness

That was a remarkable decision rendered by the Supreme Court of the United States last week which freed a negro convicted of assaulting a white woman in a small Texas town. Strangely enough the negro was not liberated because the Court found him innocent of the charge on which he had been indicted and convicted, but because the grand jury which indicted him was composed entirely of white men.

Since the Court held that the negro should be freed because no negroes sat upon the jury which indicted him it follows logically enough, it seems to us, that it would similarly hold future cases tried exclusively by white men were illegal. And if a negro is to be freed because the jury was not composed of both blacks and white in exact proportion to the population, shouldn't a white man be freed for the same reason?

It strikes us the Supreme Court is treading on dangerous ground and evincing more class consciousness and racial prejudice than the average Southerner. If a man can gain his freedom because no men of his own race sat upon the jury which convicted him, shouldn't the Supreme Court also hold that a Catholic convicted by a jury made up entirely of Protestants did not have a fair trial, or a Methodist convicted by a jury of Baptists?

This line of reasoning might be carried a little farther until a member of the Rotary Club convicted of undue profiteering for serving best could sue for his freedom because his jury had more Kiwanians on it than Rotarians in proportion to the whole population; or a Mason might be regarded as illegally convicted because his jury was composed of members of the wrong lodge.

Economic differences also should be considered as well as racial and social characteristics under this latest decision. Is it fair, for instance, for a railroad man to be convicted by a jury composed of a larger number of farmers than the relation of their group to the population as a whole? Or does the Court believe that a banker to get a fair trial should be tried exclusively by members of his own profession?

If this sort of thing continues it is liable to place an impossible burden upon state attorneys and trial lawyers who select the juries. They must consider a person's race religion, economic position and social standing, as well as his sex, age, and health and be sure that the jury which tries him contains a proportionate number for each group

JURIES - 1940

Greensboro, N. C., News
November 29, 1940

WHAT COURT MEANS.

Decision by the United States Supreme court reversing the conviction of a Texas negro because citizens of his race were barred from the grand jury which indicted him was to have been expected. That discriminations because of color have continued here and there in the south has been due simply to the fact that they have not been brought to the attention of the nation's final judicial authority.

The net result of putting the names of negroes on jury lists will hardly affect the dispensation of justice in those communities in which it has been contended the negro does not get fair treatment. Honest and courageous white sheriffs have at times failed to provide sufficient protection; but we cannot for the life of us see why Texas or North Carolina white men would want to assume entire responsibility for the life and death of those of other races.

The remedy for such situations as are brought about by United States Supreme court reversals of cases dealing with negroes is plain. Discrimination because of race must cease. This doesn't mean that a single thing is to be taken away from the more intelligent and upright members of any community. It should mean that to the less intelligent and weaker are given a fair break in the courts—the only place on the face of the earth where they can hope to find equal footing.

It is high time that the south, along with the rest of the country, should get what the Supreme court means.

Winston-Salem, N. C. Journal
December 3, 1940

Forsyth Negro Sits as Juror In Court Here

For the first time in many years a Negro sat on a jury in a Forsyth superior court term yesterday and engaged in trial of cases.

The juror was W. H. Conrad, elderly and highly interested in the courtroom procedure.

B. E. Redmond, young white man, pleaded guilty in two cases of forgery and was sentenced to serve 12 months on the roads.

Leemon Day Negro, was acquitted of a charge of embezzlement.

Albert C. Hudspeth, 18-year-old white youth, pleaded guilty to cursing and abusing an officer, nuisance, assault and assault with a deadly weapon. Officers testified the combined efforts of four big policemen were required for 30 minutes to load Hudspeth in the "black Mariah," and some of the charges grew out of that scuffle.

Judge J. Will Pless Jr., withheld judgment pending a study of a proposal to permit the battling youth to enlist in the army.

Union, S. C. Times
November 25, 1940

COURT RULES IN FAVOR OF NEGRO JURORS

WASHINGTON, Nov. 25—(AP)—The Supreme Court ruled today that racial discrimination resulting in the exclusion of qualified negroes from grand jury service not only violated the constitution "but is at war with our basic concepts of a Democratic society and a Representative government."

Justice Black delivered the unanimous decision, which set aside the conviction of a Houston, Tex., negro sentenced to life imprisonment for criminally assaulting a white woman.

The negro, Edgar Smith, contended he had been denied constitutional rights because members of his race had been "systematically excluded" from Harris county grand juries.

Chattanooga, Tenn., Daily Times
December 1, 1940

Negroes on Jury

The United States supreme court last week reversed the conviction of a Houston (Tex.) Negro for assaulting a white woman on a finding that Negroes had been barred from grand juries in the county where he was indicted. The unanimous decision was delivered by Justice Hugo Black, Alabaman, whose appointment to the supreme court had been opposed because of his past connections with the Ku-Klux Klan.

The supreme court upheld the government's claim to income taxes in cases where the original possessor of income transferred his possession of it, in one case to a son, and in the other to a corporation trustee. It refused to review a Georgia case restricting the administration of unemployment compensation.

Statesville, N. C. Daily
November 30, 1940

Increases His Stature.

The Supreme Court has again put its ample foot down on so-called "lily white" juries by handing down a decision that makes it clear that the highest tribunal will not uphold convictions which stem from grand juries, allegedly packed to exclude Negroes. In a case coming up from Texas the court sets aside the conviction of a 20-year-old Negro charged with attacking a white girl, because the jury was composed entirely of white men.

Here in the South this principle of law has been accepted with surprising willingness. There is nothing else to do. The Supreme Court has spoken definitely about it ,and prosecutors are careful, even to the point of leaning over backwards, to see that it is observed so there may be no kick-back after conviction.

The Texas law, like that of most Southern states, does not of itself exclude Negroes from jury duty, but it is susceptible of mapipulation to that end, and there is no denying that such manipulation is quite frequent. But not so much to serve the defeat of justice, as to preserve certain social standards to which Southerners heartily subscribe. The records tell plainly that Negroes get justice in our courts whether manned entirely by whites or not. When there is injustice it seldom stems from the color line, else the "poor whites" would not also be complaining.

However, we are less interested in the Supreme Court's latest decision than in the fact that a Southerner wrote it. When Justice Black was named to the Supreme Court bench, he was to be the Horrible Example of a political misfit on the highest tribunal in the land. Few friendly voices were raised in his behalf. Yet there were some, and this corner was among them, who predicted that Justice Black would serve creditably and well. And we, along with a tolerant few, are not surprised to read this written into the decision by him:

"Racial discrimination . . . not only violates our Constitution and the laws enacted under it, but is at war with our basic concepts of a democratic society and a representative government."

Nothing in that with the ring of racial hatred that is supposed to come from a robed figure holding a torch, such as Justice Black has been pictured before and since his appointment, and it must be embarrassing to his critics to find him adding more height to his judicial stature with each new decision he writes.

Bristol, Va. Herald Courier
November 27, 1940

When Will They L

The conviction of a Houston (Texas) Negro for assaulting a white woman has been reversed by the United States Supreme Court on a finding that members of his race had been barred from Grand Juries in the county where the Negro was indicted. In a unanimous decision, delivered by Justice Black, the Court declared that "it is part of the established tradition that in the use of juries as instruments of public justice that the jury be a body truly representative of the community," and that "for racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it, but is at war with our basic concepts of a Democratic society and a representative Government.

The Supreme Court, in previous decisions, has made it plain that it will hold illegal convictions of Negroes when and where members of their race are excluded from Grand Juries, and that Negroes so convicted can appeal to that tribunal with absolute assurance that the verdicts in their cases will not be allowed to stand. If there are Negroes who do not know this, there are lawyers who can tell them and will handle their cases. When will States like Texas learn what everybody should know by this time—that the Supreme Court will reverse convictions of Negroes in such cases as that appealed from Houston?

Edgar Smith, eighteen-year-old defendant in this case, was sentenced to life imprisonment, but he may escape punishment altogether. The Supreme Court's decision apparently had the effect of freeing him completely, since the Assistant State Attorney-General of Texas told the Court that the time limit for obtaining a new indictment had expired and thus the Negro could not be retried. That may be unfortunate, but the fault is not with the Supreme Court. It is with the Texas Courts.

Picayune, Miss. Item
November 28, 1940

BESIDE THE POINT——

In 1938 a young Negro in Houston, Texas, was convicted on a charge of assault upon a white woman. He is still in prison on the charge, but will not be very long, for the Supreme Court of the United States says he is not guilty of the charge, because Negroes are not allowed to sit on juries in Texas.

There are times when we think we are intelligent enough and fair enough to deal justly on matters in controversy, but men trained in jurisprudence, and who by experience and education ought to know better, in the case of this young Negro, differ with our opinion.

It may be the Negro should have been freed. We believe many Negroes have been lynched and convicted of crimes they never committed, but to free a Negro, or any other man, because of a custom established on tradition that has no bearing on the particular crime charged, we think it is a miscarriage of justice. In this case, the Negro was charged with assaulting a white woman. He was convicted in 1938 and has been in jail pending a hearing on his appeal. The appeal was heard and the court did not decide whether he was guilty of the crime charged, but decided he must be allowed to commit such a crime and not be penalized for it, because of a custom as old as the country itself, barring Negroes from participating in jury service. Had not such a custom been observed the South would never have recovered from the ruinous effects of the Civil War.

Tampa, Fla Tribune
December 7, 1940

Negro Jurors

Out of the case of the three negroes granted a new trial by the United States Supreme Court because the Court held their confessions were obtained under duress, has sprung a situation involving all future trials and convictions of negroes in the state, unless something is done about it.

Just a few days ago, Justice Black, the same Justice who wrote the decision in the case of the three negroes, wrote another opinion reversing the conviction of a negro in Texas, because negroes are excluded from jury service in that state. This decision was offered when the three Florida negroes came up for retrial at West Palm Beach Tuesday, as grounds for dismissal of the charge, it being alleged that no negroes are on the jury lists of Broward county. The Judge reserved his decision.

Negroes are not exactly excluded from jury service in Florida state courts, but they practically are so excluded, for the reason that no names of negroes are placed in the boxes from which jurors are drawn. If any negro convicted in a county where this exclusion obtains goes to the United States Supreme Court, his conviction undoubtedly will be set aside, under the identical ruling made by Justice Black in the Texas case.

The same question figured extensively in the notorious Scottsboro case, and was urged by Leibowitz, the astute defense counsel, as grounds for throwing the cases out of court.

The obvious remedy, of course, is that those charged with the duty of supplying names for jury duty—in this county, two Jury Commissioners—put in one or more names of negro citizens. If one of these should happen to be drawn, the attorneys in the case could exercise the privilege of objecting to the juror, This probably would meet the Supreme Court requirement. Unless this is done, there'll probably be frequent cases of nullified convictions.

Negro jurors are listed and frequently drawn in the United States Courts in this state.

JURIES - 1940

St. Petersburg, Fla. Independent
November 26, 1940

Negroes May Sit On County Juries

State Attorneys Say New Policy Seems 'Unavoidable'

Clearwater, Nov. 26—Taking cognizance of a series of recent United States supreme court rulings, the latest of which was announced yesterday, State's Attorney Chester B. McMullen said today that the placing of negroes' names in Pinellas county jury boxes in the future "seems unavoidable."

In the past, the names of no negroes have been placed in the box from which names of prospective jurors are drawn. The supreme court has recently upset several convictions from counties in the South which follow such a policy.

Pasco county, adjoining Pinellas on the north, already follows the policy of placing the names of some negroes in its jury box, but none has ever actually served on a jury there.

COLORED MAN WINS LIBERTY IN HIGH COURT

DEC 5 1940

Washington, D. C.—According to a press release the conviction of a Houston, Tex.. colored man for assaulting a white woman was reversed by the Supreme Court today on a finding that members of his race had been barred from Grand Juries in the county where he was indicted.

"It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community," said the unanimous decision, delivered by Justice Black.

The court found that, although colored persons constituted more than one-fifth of the population of Harris County and "a minimum of from three to six thousand of them measure up" to statutory qualifications, only five had served on Grand Juries from 1931 through 1938, when the defendant was indicted, and none had served in 1937 or 1938.

Philadelphia Pa.

The defendant, Edgar Smith, 18, had been sentenced to life imprisonment. The decision will free him completely, for George W. Barcus, Assistant State Attorney General, told the court that the time limit for obtaining a new indictment had expired.

Sandersville, Ga., Progress
December 12, 1940

The Supreme Court of the United States, in a decision that was handed down by Justice Black, former U. S. Senator from Alabama, decided in a case that went up from Texas that it is not legal to try and convict a Negro prisoner under an indictment preferred by a grand jury on which there are no Negroes. More in that line will be heard in the future from time to time. Our minds had just as well be made up on that.

Sanford, N. C., Herald
November 27, 1940

Negro Goes Free

The United States supreme court Monday reversed the conviction of a Texas negro for criminal assault on a white woman on the finding that negroes had been barred from grand juries in the county where he was indicted. Texas officials said the defendant would go free as the time limit for obtaining a new indictment had expired. In its decision, delivered by Justice Black, the court said "It is a part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community," and that although more than one-fifth the population of Harris county, Texas was composed of negroes, at least 3,000 to 6,000 of which measure up to statutory ualifications, only five had served on grand juries from 1931 through 1938 when the defendant was indicted, and none in 1937 and 1938.

Florida Bar On Negro Jurors Wins New Trial

DEC 20 1940

Atlanta, Ga.

WEST PALM BEACH, Fla.—(ANP)—Ruling that the lack of Negroes on the grand jury "'indicated an intentional racial discrimination," Circuit Judge C. E. Chillingworth Thursday quashed murder charges against three men who have spent seven years in Florida state prison death cells.

A fourth defendant was declared insane last February. The four were convicted three times, in the killing of Robert Dorsey a white fish peddler. Last February the United States Supreme court reversed the convictions, holding that coercion appeared to have been used in obtaining confessions.

The fourth trial, scheduled in October, was delayed when the defense attacked the original indictments on the ground that Negroes had been "consistently barred" from Broward county juries.

Charleston, S. C. News & Courier
December 19, 1940

The New "Reconstruction"

A nail was hit hard on the head by W. F. Brown, Florence, S. C., in a letter of 100 words to The News and Courier, printed yesterday.

The supreme court of the United States is handing down decisions that take no account of the differences of race and other circumstances in parts of the United States.

Requirements of law that Indians and white people in the American colonies should have equal representation on juries would have been fully as sensible 200 years ago as the effort now going on to eliminate all differences in relation to the white and colored races in the South.

The Washington government and the federal courts are doing more injury to the Southern negroes by laying down hard and fast formulae and trying to apply them uniformly in all parts of the country, disregarding local conditions, than they are helping these negroes. The truth is that government is now, not frankly but actually, endeavoring to break down racial separation and diversities, whether political or social, and most of the Southern politicians are silently consenting in this national campaign.

The campaign may succeed, but not until the central government shall place the Southern states again under military subjection, as it placed them in the two Grant administrations.

Another "Reconstruction" is now contemplated, and the Democratic party has joined the Republican party in effort to establish it. Behind the effort is the negro vote concentrated in the great Northern cities. Southern leaders, most of them, shut their eyes to the facts. Gifts, allotments, offices, are remarkable eye-shutters.

When The News and Courier says these things few South Carolinians believe it. Five years The News and Courier has said them—and the thanks that it gets is denunciation as a "traitor" to the Democratic party.

Soon or late, when the issue comes home to the people, there will be resistance and rebellion. It will not be confined to Georgetown or other Southern town or region. The Washington administration will have before it what the Republican administrations had from 1868 to 1876.

The News and Courier charges that for the danger of troubles in the South the national Democratic party is primarily responsible.

Above all, The News and Courier urges that crime be punished by law only. When it is otherwise punished those who inflict the punishment convert themselves into criminals. When a thousand men unite to lynch they unite to do murder.

The government of the United States ought to have a little common sense. The Northern negro leaders ought not to make fools of themselves at the cost of the Southern negroes because their hides happen not to be in danger.

JURIES - 1940

Racial Discrimination In Jury Selection Brings Negro Retrial

Black Delivers Decision As Court Sets Aside Conviction Of Negro

NOV 25 1940

WASHINGTON — (AP) — The Supreme Court ruled Monday that racial discrimination resulting in the exclusion of qualified Negroes from grand jury service not only violated the constitution "but is at war with our basic concepts of a democratic society and a representative government."

Justice Black delivered the unanimous decision, which set aside the conviction of a Houston, Tex., Negro sentenced to life imprisonment for criminally assaulting a white woman.

The Negro, Edgar Smith, contended he had been denied constitutional rights because members of his race had been "systematically excluded" from Harris County grand juries.

Justice Black asserted that "it is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community."

Explaining that only five of the 384 grand jurors who served in Harris County from 1931 through 1938 were Negroes, Black added:

"Chance and accident alone could hardly have brought about the listing for grand jury service of so few Negroes among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service.

"Nor could chance and accident have been responsible for the combination of circumstances under which a Negro's name, when listed at all, almost invariably appeared as No. 16, and under which No. 16 was never called for service unless it proved impossible to obtain the required jurors from the first 15 names on the list."

The court refused Monday to review a decision which Georgia officials contended would "seriously endanger" the successful administration of unemployment compensation programs of 33 states.

The decision, by the Georgia Supreme Court, barred the state from treating two or more concerns under the same ownership or control as a single unit in determining whether there were sufficient employes to warrant the collection of unemployment compensation assessments.

Before adjourning for two weeks, the tribunal also declined to pass on a Circuit Court ruling that brokers selling securities owned by others are liable for misrepresentation under the 1933 "Truth in Securities" act.

The court also delivered two opinions which the government said would thwart the avoidance of income taxes.

In one opinion the tribunal ruled the federal government might collect an income tax from the owner of bonds, when the interest coupons had been transferred to a son and the latter had included the income in his tax return. The decision applied specifically to Paul R. G. Horst, of Brooklyn, N. Y.

In the other decision the court held that a life insurance agent, Gerald A. Eubank, of New York city, who had assigned to others renewal commissions on policies sold, was subject to a federal income tax on the commissions.

Justice Stone delivered the two, six to three tax decisions. Justice McReynolds wrote a dissenting opinion in which Chief Justice Hughes and Justice Roberts concurred.

Final decisions were postponed at least until Dec. 9 on litigation involving regulation of the nation's hydroelectric plants and two freedom of speech cases.

High Court Assails Ban on Negro Jurors

By the Associated Press

NOV 25 1940

WASHINGTON, Nov. 25. — The Supreme Court ruled today that racial discrimination resulting in the exclusion of qualified Negroes from grand jury service not only violated the Constitution "but is at war with our basic concepts of a democratic society and a representative government."

Justice Hugo Black delivered the unanimous decision, which set aside the conviction of Edgar Smith, a Houston Negro sentenced to life imprisonment for criminally assaulting a white woman.

The appellant set forth that members of his race had been "systematically excluded" from Harris County grand juries.

The court refused to review a decision which Georgia officials contended would "seriously endanger" the successful administration of unemployment compensation programs of 33 states.

The decision, by the Georgia Supreme Court, barred the state from treating two or more concerns under the same ownership or control as a single unit in determining whether there were sufficient employees to warrant the collection of unemployment compensation assessments.

Life Term of Texas Youth Is Reversed

Justice Hugo L. Black Delivers Opinion Condemning System Which Excludes Negro from Grand Jury Service

NOV 29 1940

WASHINGTON, D. C.—An opinion which will have as far-reaching effect as the famous Scottsboro decision was handed down by the United States Supreme court here Monday, November 25, when a young Texan was freed because he was indicted by a grand jury in a county which systematically excludes Negroes from grand jury service.

The unanimous opinion of the court, read by Justice Hugo L. Black, held that the "systematic exclusion of Negroes from grand jury service constitutes an infringement upon the Texans' rights as set forth in the fourteenth amendment to the U. S. constitution.

The direct beneficiary of the decision was Edgar Smith, 20-year-old Houston, Texas, youth who two years ago was convicted of criminal assault upon a Louetta, Texas, farm woman. He was sentenced to life imprisonment.

Smith's attorneys, Harry W. Freeman and Sam W. Davis, produced evidence that only five of the grand jurors who served in Harris county from 1931 to 1938 were Negroes.

On this point, Mr. Justice Black ruled:

"Chance and accident alone could hardly have brought about the listing for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service.

"Nor could chance and accident have been responsible for the combination of circumstances under which a Negro's name, when listed at all, almost invariably appeared as No. 16, and under which No. 16 was never called for service unless it proved impossible to obtain the required jurors from the first 15 names on the list."

The Supreme Court decision sets young Smith free. Under the Texas statute of limitations, he cannot be re-indicted and tried again on the same charge. He will be given his freedom as soon as the official mandate of the supreme court reaches local authorities.

In his opinion, Mr. Justice Black pointed out that the fourteenth amendment to the Constitution strictly specifically and clearly prohibits "racial discrimination in the selection of grand juries."

In referring to the practice subscribed to by Southern states, and employed here in Houston, county seat of Harris county, Justice Black said:

"Where jury commissioners limit those from whom grand juries are selected to their personal acquaintance, discrimination can arise from commissioners who know no Negroes as well as from commissioners who know but eliminate them.

"If there has been discrimination, whether accomplished ingeniously...., the conviction cannot stand."

The opinion further said:

"Texas statuatory scheme is not in itself unfair; it is capable of being carried out with no racial discrimination whatsoever."

"But," Justice Black held, "by reason of the wide discretion permissible in the various steps of the plan, it is equally capable of being applied in such a manner as practically to proscribe any group thought by the law's administrators to be undesirable.

"And when the record before us the conclusion is inescapable that it is the latter application that has prevailed in Harris county."

Edgar Smith was convicted of assaulting a white woman, was later sentenced to life imprisonment in the Harris county Criminal court. The Texas Court of Criminal Appeals upheld the lower court.

In presenting argument to establish Smith's contention, counsel for the youth, set out that only five Negroes had been called to actual service on Harris county grand juries in the past 10 years, and that none had served on the last 10 grand juries, covering a period of more than two and one-half years.

The state of Texas was represented by George W. Barcus, assistant state attorney-general. He told the Supreme court that Smith could not be re-indicted if the court should set aside his conviction, since the statute of limitations (one year) within which a new indictment might be obtained had expired.

Smith's case has been before several courts since May, 1939. Smith was arrested on August 1, 1938, in connection with an alleged asasult against a white woman on a farm near Louetta. The grand jury indicted him on September 21, 1938.

Freeman and Davis were appointed counsel for Smith by Judge Langston G. King. The two attorneys filed a motion to quash the indictment on the grounds Negroes had been "systematcially excluded" from the jury service, contrary to provision of the fourteenth amendment. Judge King overruled the motion. The case was then tried on its merits.

Judge King being ill when it was called, Judge Kenneth McCalla presided when it came to trial May 15, 1939. The trial lasted three days. The jury found Smith guilty. Life imprisonment was asessed against Smith.

Freeman and Davis, counsel for Smith, took recourse to the Texas Court of Criminal Appeals. The grounds set out by defense attorneys were that the motion to quash the indictment should not have been overruled, and that the evidence was insufficient for conviction of racial "discrimination" arose in the Smith case here when it was brought up for trial, "every subsequent grand jury has had one Negro servin gon it," according to the informed circles.

The Edgar Smith case attracted nation-wide attention when it came to trial as well as when it was appealed to the Texas Court of Criminal Appeals. The Defense attorneys contended that first thing he was g to "go to the jail and tell Smith about it."

Meantime, since the legal question of the Texas State constitution (the bill of rights) and numerous other statutes

Racial Discrimination In Jury Selection Brings Negro Retrial

Black Delivers Decision As Court Sets Aside Conviction Of Negro

NOV 25 1940

WASHINGTON — (AP) — The Supreme Court ruled Monday that racial discrimination resulting in the exclusion of qualified Negroes from grand jury service not only violated the constitution "but is at war with our basic concepts of a democratic society and a representative government."

Justice Black delivered the unanimous decision, which set aside the conviction of a Houston, Tex., Negro sentenced to life imprisonment for criminally assaulting a white woman.

The Negro, Edgar Smith, contended he had been denied constitutional rights because members of his race had been "systematically excluded" from Harris County grand juries.

Justice Black asserted that "it is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community."

Explaining that only five of the 384 grand jurors who served in Harris County from 1931 through 1938 were Negroes, Black added:

"Chance and accident alone could hardly have brought about the listing for grand jury service of so few Negroes among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service.

"Nor could chance and accident have been responsible for the combination of circumstances under which a Negro's name, when listed at all, almost invariably appeared as No. 16, and under which No. 16 was never called for service unless it proved impossible to obtain the required jurors from the first 15 names on the list."

The court refused Monday to review a decision which Georgia officials contended would "seriously endanger" the successful administration of unemployment compensation programs of 33 states.

The decision, by the Georgia Supreme Court, barred the state from treating two or more concerns under the same ownership or control as a single unit in determining whether there were sufficient employes to warrant the collection of unemployment compensation assessments.

Before adjourning for two weeks, the tribunal also declined to pass on a Circuit Court ruling that brokers selling securities owned by others are liable for misrepresentation under the 1933 "Truth in Securities" act.

The court also delivered two opinions which the government said would thwart the avoidance of income taxes.

In one opinion the tribunal ruled the federal government might collect an income tax from the owner of bonds, when the interest coupons had been transferred to a son and the latter had included the income in his tax return. The decision applied specifically to Paul R. G. Horst, of Brooklyn, N. Y.

In the other decision the court held that a life insurance agent, Gerald A. Eubank, of New York city, who had assigned to others renewal commissions on policies sold, was subject to a federal income tax on the commissions.

Justice Stone delivered the two, six to three tax decisions. Justice McReynolds wrote a dissenting opinion in which Chief Justice Hughes and Justice Roberts concurred.

Final decisions were postponed at least until Dec. 9 on litigation involving regulation of the nation's hydroelectric plants and two freedom of speech cases.

High Court Assails Ban on Negro Jurors

NOV 25 1940

By the Associated Press

WASHINGTON, Nov. 25. — The Supreme Court ruled today that racial discrimination resulting in the exclusion of qualified Negroes from grand jury service not only violated the Constitution "but is at war with our basic concepts of a democratic society and a representative government."

Justice Hugo Black delivered the unanimous decision, which set aside the conviction of Edgar Smith, a Houston Negro sentenced to life imprisonment for criminally assaulting a white woman.

The appellant set forth that members of his race had been "systematically excluded" from Harris County grand juries.

The court refused to review a decision which Georgia officials contended would "seriously endanger" the successful administration of unemployment compensation programs of 33 states.

The decision, by the Georgia Supreme Court, barred the state from treating two or more concerns under the same ownership or control as a single unit in determining whether there were sufficient employees to warrant the collection of unemployment compensation assessments.

Life Term of Texas Youth Is Reversed

Justice Hugo L. Black Delivers Opinion Condemning System Which Excludes Negro from Grand Jury Service

NOV 29 1940

WASHINGTON, D. C.—An opinion which will have as far-reaching effect as the famous Scottsboro decision was handed down by the United States Supreme court here Monday, November 25, when a young Texan was freed because he was indicted by a grand jury in a county which systematically excludes Negroes from grand jury service.

The unanimous opinion of the court, read by Justice Hugo L. Black, held that the "systematic exclusion of Negroes from grand jury service constitutes an infringement upon the Texans' rights as set forth in the fourteenth amendment to the U. S. constitution.

The direct beneficiary of the decision was Edgar Smith, 20-year-old Houston, Texas, youth who two years ago was convicted of criminal assault upon a Louetta, Texas, farm woman. He was sentenced to life imprisonment.

Smith's attorneys, Harry W. Freeman and Sam W. Davis, produced evidence that only five of the grand jurors who served in Harris county from 1931 to 1938 were Negroes.

On this point, Mr. Justice Black ruled:

"Chance and accident alone could hardly have brought about the listing for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service.

"Nor could chance and accident have been responsible for the combination of circumstances under which a Negro's name, when listed at all, almost invariably appeared as No. 16, and under which No. 16 was never called for service unless it proved impossible to obtain the required jurors from the first 15 names on the list."

The Supreme Court decision sets young Smith free. Under the Texas statute of limitations, he cannot be re-indicted and tried again on the same charge. He will be given his freedom as soon as the official mandate of the supreme court reaches local authorities.

In his opinion, Mr. Justice Black pointed out that the fourteenth amendment to the Constitution strictly specifically and clearly prohibits "racial discrimination in the selection of grand juries."

In referring to the practice subscribed to by Southern states and employed here in Houston, county seat of Harris county, Justice Black said:

"Where jury commissioners limit those from whom grand juries are selected to their personal acquaintance, discrimination can arise from commissioners who know no Negroes as well as from commissioners who know but eliminate them.

"If there has been discrimination, whether accomplished ingeniously...., the conviction cannot stand."

The opinion further said:

"Texas statuatory scheme is not in itself unfair; it is capable of being carried out with no racial discrimination whatsoever."

"But," Justice Black held, "by reason of the wide discretion permissible in the various steps of the plan, it is equally capable of being applied in such a manner as practically to proscribe any group thought by the law's administrators to be undesirable.

"And when the record before us the conclusion is inescapable that it is the latter application that has prevailed in Harris county."

Edgar Smith was convicted of assaulting a white woman, was later sentenced to life imprisonment in the Harris county Criminal court. The Texas Court of Criminal Appeals upheld the lower court.

In presenting argument to establish Smith's contention, counsel for the youth, set out that only five Negroes had been called to actual service on Harris county grand juries in the past 10 years, and that none had served on the last 10 grand juries, covering a period of more than two and one-half years.

The state of Texas was represented by George W. Barcus, assistant state attorney-general. He told the Supreme court that Smith could not be re-indicted if the court should set aside his conviction, since the statute of limitations (one year) within which a new indictment might be obtained had expired.

Smith's case has been before several courts since May, 1939. Smith was arrested on August 1, 1938, in connection with an alleged asasult against a white woman on a farm near Louetta. The grand jury indicted him on September 21, 1938.

Freeman and Davis were appointed counsel for Smith by Judge Langston G. King. The two attorneys filed a motion to quash the indictment on the grounds Negroes had been "systematcially excluded" from the jury service, contrary to provision of the fourteenth amendment. Judge King overruled the motion. The case was then tried on its merits.

Judge King being ill when it was called, Judge Kenneth McCalla presided when it came to trial May 15, 1939. The trial lasted three days. The jury found Smith guilty. Life imprisonment was assessed against Smith.

Meantime, since the legal question of racial "discrimination" arose in the Smith case here when it was brought up for trial, "every subsequent grand jury has had one Negro servin gon it," according to informed circles.

The Edgar Smith case attracted nation-wide attention when it came to trial as well as when it was appealed to the Texas Court of Criminal Appeals upheld the trial court. Defense attorneys then appealed to the United States Supreme court. Freeman and Davis, counsel for Smith, took recourse to the Texas Court of Criminal Appeals. The Defense attorneys contended that first thing grounds set out by defense attorneys were that the motion to quash jury service" was a violation of the Fedthe indictment should not have been overruled, and that the fourteenth amendment to the Federal Constitution, of section 19, article one of the Texas State constitution (the bill of rights) and numerous other statutes.

When the information of the Supreme Court reached Attorney Freeman, he said the thing he was going to do was go to the jail and tell Smith it."

pealed to the Texas Court of Criminal Appeals. Now that the highest legal tribunal in the nation has handed down its far-reaching decision, opinion prevails even in Southern states, that Negroes will be more inclined hereafter to seek proper legal recourses to safeguard their Constitutional rights as American citizens and jury commissioners less likely to bar Negroes from grand juries

Letters To The Edito

DEC 17 1940

"Equal Justice"

To the Editor of The Post—Sir: I'm a Southerner, and I can agree that there is some merit in your editorial, "Equal Justice," of November 26, but insofar as it relates to the Negro I think you can find some few identical cases in the so-called Northern tier of States.

The thing that concerns me, however, is that these Supreme Court decisions may open the way for more or less wholesale assaults on convictions, because it can be shown that a very large percentage of our people, without regard to color, have been discriminated against because they have been barred from their legal right to serve on juries of the land. Here is how:

As stated, I'm from a Southern State. I am 50 years of age. I have been a registered voter since 21. I have never been regularly called for jury duty of any sort. On one occasion I was summoned from the street to fill in a jury.

My father, age 73, and my brother, age 47, live in a county of relatively small population. My father has served twice, as I recall, and my brother has been called for jury duty once. We are average Americans, each with quite all, I'm sure, that it takes for such duty. Each of us, I'm equally sure, is of good repute in his community. (I've only been in Washington about three years.)

That our experience is rather general is borne out by the fact that of the dozen or more men who work with me, coming from nearby Maryland, and the East, Middle West and West, not a single one has ever been called for jury duty.

If it is shown that any particular racial group has consistently not been included on the list of prospective jurors I agree with the sentiments so well expressed by Mr. Justice Black and your paper, but—if we are to go any further, then I can see why a clever attorney can upset just about any jury conviction that may be brought in.

What do you think? READER.

Washington, Dec. 14.

Court Says Negroes Were Excluded From Jury Duty

NOV 2 8 1940

Washington, D. C. — The conviction of a Houston, Texas, Negro for assaulting a white woman was reversed by the supreme court Monday on a finding that Negroes had been barred from grand juries in the county where he was indicted.

"It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community," said the unanimous decision, delivered by Justice Black.

The court found that although Negroes constitute more than one-fifth of the population of Harris County, Texas, and "a minimum of from three to six thousand of them measure up" to statutory qualifications, only five had served on grand juries from 1931 through 1938, when the defendant was indicted, and none had served in 1937 or 1938.

The defendant, Edgar Smith, 18 had been sentenced to life imprisonment.

The decision apparently had the effect of freeing him completely. George W. Bacus, assistant state attorney general, told the court the time limit for obtaining a new indictment had expired and that thus he could not be retried.

Black, in an opinion last Lincoln's birthday, upset the conviction of a Florida Negro who was subjected to a "third degree." In Monday's opinion, he said Smith's conviction could not stand if there had been discrimination, however it was accomplished.

Quash Indictments Of 4 'Little Scottsboro' Men

Defender

DEC 21 1940

WEST PALM BEACH, Fla. —Judge C. E. Chillingsworth of the Palm Beach county circuit court Tuesday, Dec. 10, granted a motion quashing indictments against Izell Chambers, Jack Williamson, Charlie Davis and Walter Woodard, defendants in the "Little Scottsboro" case upon the ground of racial discrimination in the selection of the grand jury that returned the indictment against them in May, 1933.

This is an aftermath of the now famous Lincoln's birthday decision by the Supreme Court of the United States when Justice Black rendered the court's opinion. The motion to quash the indictment was filed on October 25, 1940 but was not heard until December 3, 1940, when the court listened to evidence from several witnesses who were subpoened and who testified for and against the defendants.

Many of the witnesses were Broward county officers, including the county commissioners who were in office and who selected the jury list from which the grand jury was drawn returning the indictment against the accused.

At the counsel table in the large circuit court room where the trial was held, sat on the one side, Attorneys Sidney J. Catts, Jr., son of a former governor of Florida, John Ziegler, a West Palm Beach lawyer and S. D. McGill, leading counsel in the case and who conducted the examination of all witnesses and made the argument while on the other side Attorneys John O'Connell and Louis Maire, representing the state.

The testimony of the various witnesses showed that no Negro had ever served on a jury in Broward county during its history in spite of the fact that the Negro population at the time of the indictment was about one half of the total population; that there were physicians, dentists, undertakers, ministers of all denominations, lodges and large buildings of great value owned by Negroes.

It was shown too, that Negroes owned 403 farms aggregating 2,254 acres of land in Broward county, aggregating $234,130; that 67 per cent of all Negro children of school age attended school; that there were 1678 families and the Negroes of that county were 89 per cent literate. This evidence was uncontradicted.

Judge Chillingsworth in sustaining the motion and discharging the defendants noted in his order that this long continued practice of excluding Negroes from jury service, as shown by the evidence, was not an accident; it did not just happen.

On the other hand he said it showed a continuous, systematic and arbitrary exclusion of Negroes from jury service by the officers of Broward county in spite of the fact that Negroes in considerable numbers were fully qualified for jury service.

This is the first time in the history of Florida that a Florida court has ever quashed a grand jury indictment based upon the ground of racial prejudice.

It is believed that from now on every county in the state will add to its list of qualified jurors the names of qualified Negroes to serve on juries.

JURIES - 1940

Danville, Va. Register
November 30, 1940

THE BLACK OPINION

From a legal standpoint, little that is new is seen in the decision handed down by the Supreme Court in granting a new trial to a Texas Negro indicted and convicted of a capital crime by all-white juries.

Mr. Justice Black's statement of the highest court's stand was but a reiteration of previous pronouncements, except that it indicated the court is a bit more aggressive in its determination to throw out all such convictions where Negroes did not serve on the grand jury that found the true bill against the defendant.

The court has held that it is not enough simply not to deny representation to the minority race on the grand jury, but that the action must be changed from negative to positive, and representation of the race must be granted, if convictions are to stand when brought before that body on appeal.

The opinion of the court, as expressed by Mr. Justice Black, creates difficulties for judges and court clerks in communities bordering the South and in many counties of the South where the Negro population is relatively small. The difficulty arises in finding sufficient Negroes outside of occupations normally exempting their followers from jury service who can meet the high standards of citizenship usually fixed as a guide in selecting the grand jury list. Names on the grand jury list in every community are those of men of the highest calibre and standing.

These difficulties have been surmounted in several Virginia cities and counties having heavy Negro populations and, consequently, heavy dockets involving Negroes in criminal actions. Since the Crawford case at Leesburg, where the defendant was brought from Boston to stand trial for the murder of a wealthy white woman, a number of Virginia cities and counties have followed the example of Loudoun County and placed one or more respected Negroes on the grand jury whenever capital charges are to be heard against a member of that race.

Judge James L. McLemore, then presiding over the Second Judicial Circuit, and a member of the special Court of Appeals, was the choice of Governor John Garland Pollard to preside at the Crawford trial, interest in which had been heightened by the intervention of Negro organizations intent on testing convictions by juries formed by all white members.

The jury that indicted Crawford included a Negro businessman. The petit jury that convicted and sentenced him was all white. There was no appeal.

Upon return to his circuit, Judge McLemore had the Jury Commissions select and include a few Negroes on their lists. As yet, no Negro has served on a petit jury, since the path from presence on the list to a seat in the jury box has a number of possible exemptions, options and strikes. Almost every term of court in the Second District, however, finds at least one Negro on the grand jury.

The plan works smoothly, protects the verdicts of the jury on appeals and satisfies a large proportion of Negro people that they have obtained justice and representation. The latter seems to be their principal contention, as some of their spokesmen readily admit. As to justice, Negroes often complain a white jury is too lenient in all-Negro crimes.

Eventually, the system employed in the Second Circuit will become general throughout Virginia areas with large Negro populations. The eventuality, however, will not materialize until there have been scores of Smith cases sent back for new trials by state or federal appellate courts.

Legally, the principle is well established. Practically, its application is just beginning.

Hope For the Future

DEC 6 1940

Grand juries, like petit juries, are not for one part of the public and to be denied to another because of race and color. The principle established in the Scottsboro cases was announced again last week by the supreme court, Justice Black being given the honor of expressing the unanimous opinion of the supreme judges.

More and more the highest judicial authorities are meeting the color question squarely. Under one pretext and another Negroes have been kept out of equal rights. But the defending local units of government are no longer permitted to offer the pretense of equality for the real thing. One Negro name in a jury wheel no more establishes the race's lawful participation in jury service than one oyster makes oyster soup.

It is only a matter of time when the pretense of former years will cease to be defended and American practice will conform to the spirit of the law. If Justice Black with his Alabama background can speak as he has on several cases, it is but a few years more to the condemnation of the all-white primary of southern states and every other device intended to nullify Negroes' citizenship.

Jackson, Miss., News
November 27, 1940

A SLAP AT THE SOUTH

The United States Supreme Court has again rapped the grand jury system in Southern States.

The tribunal reverses the criminal assault conviction of a negro on the ground that negroes were barred from the grand jury by which he was indicted.

Literal interpretation and rigid application of that decision would almost empty the penitentiaries of all Southern States.

It now remains for criminal lawyers to offer motions to quash indictments against their clients on the ground that they were returned by grand juries composed exclusively of white men.

Whether or not this will be done remains to be seen. Lawyers who engage in criminal practice usually resort to all known subterfuges and technicalities to save their client.

This much is certain. From now on circuit judges in Mississippi must see to it that there is at least one negro on each grand jury empanelled.

Danville, Va., Register
November 30, 1940

WILL CONTINUE WHITE JURIES

No Change in Practice Required by Black Opinion; Use In State Still Optional

Danville and adjacent Corporation and Circuit Courts are not expected to follow the lead of the Second Judicial Circuit of Virginia in selecting Negro grand jurors, even though the U. S. Supreme Court again has affirmed its rulings by granting a new trial to a member of that race indicted and convicted by an all-white jury.

The high court held that the defendant has been denied constitutional rights.

Negroes have been serving on the grand juries of Southampton, Nansemond, Suffolk and other Tidewater cities and counties since the Crawford case was tried in Loudoun County several years ago and the practice of placing a Negro on the grand jury at terms expected to pass upon a capital crime involving a member of that race was initiated in the 26th Judicial Circuit.

It was pointed out here yesterday by competent legal authority that the opinion written by Mr. Justice Black does not impose upon any court the obligation to change its present practice, whether it is to use all white or mixed grand juries. Until an appeal, such as the Smith case, is carried to the State Supreme Court of Appeals and a ruling from that tribunal is given for the guidance of the Virginia judiciary, city and county courts are entirely free to follow existing practices.

Those Virginia courts where Negro jurors are used, it was said, have made the change voluntarily in an effort to reduce the risk of mistrials and reversals in appeals.

Greenville, S. C. News
November 27, 1940

NEGROES AND JURY SERVICE

Numerous citizens will find food for thought in the United States Supreme Court decision which, in effect, sets free a negro defendant in Houston Texas, who was convicted of assault upon a white woman, on the grounds that there were no negro members of the grand jury in the county where he was tried.

In the opinion by Justice Black, the position is apparently taken by the Court that racial discrimination was practiced in excluding negroes from the grand jury, which the Court says should be a "body truly representative of the community."

Press dispatches summarizing this decision do not go lengthily into the processes of reasoning followed by the Court; but one is struck by that passage in the opinion in which there is admission that some negroes had served as members of the grand jury in this Texas county of Harris in the years between 1931 and 1938. From this passage in the opinion the reader gains the impression that the Court has based its judgment as to racial discrimination on the fact that although negroes constitute more than one-fifth of the population of Harris county, only five negroes had served on grand juries in the years cited. The Court holds that from three to six thousand of these negroes measure up to "statutory qualifications."

The thought will occur to most citizens that since grand as well as petty jurors are drawn, or are supposed to be drawn, by actual chance from the total number of eligible citizens, whose names are placed in a box for that purpose—somewhat after the manner of the recent military service draft in Washington—it might easily happen that no negroes would be drawn for such duty in some years or in several years. Harris county had a total population of 186,667 in 1930, and since the percentage of negro citizens statutorily qualified for such duty is evidently small the drawing of say eighteen men a year out of the total, by chance, for a grand jury, would under the laws of chance more often result in a panel composed entirely of white citizens.

We do not suppose the Court would wish to be understood as holding that negroes *must* be drawn upon grand and petit jurors in proportion to their numbers in a community. For that would destroy or greatly impair the "lottery" principle of drawing jurors which is an essential foundation of the jury system. At best it would probably require separation or segregation of citizens eligible for jury service into two classes on the basis of color or race, from each of which a proportionate number of jurors would be drawn; and any such procedure would seem to be contrary to the constitutional provisions which Justice Black is undertaking in this case to uphold. The constitutional principle would seem to require that all citizens qualified for jury duty, regardless of race, should have their names in the same general box from which jurors are drawn by chance.

Birmingham, Ala., Age-Herald
November 28, 1940

Implicit Warning

In an unanimous decision, the Supreme Court of the United States Monday reversed the conviction of a Negro sentenced to life imprisonment in Texas on the ground that there had been discrimination against Negroes in Grand Jury selection.

"Here," said the opinion handed down by Justice Black, "the Texas statutory scheme is not in itself unfair; it is capable of being carried out with no racial discrimination whatsoever. But by reason of the wide discretion permissible in the various steps of the plan, it is equally capable of being applied in such a manner as practically to proscribe any group thought by the law's administrators to be undesirable. And from the record before us the conclusion is inescapable that it is the latter application that has prevailed in Harris County.

"Chance and accident alone could hardly have brought about the listing for Grand Jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service."

Justice Black pointed out that the Texas court clerk had testified that in 1931-1938 inclusive, only five of 384 grand jurors were Negroes. A minimum of 3,000 to 6,000 Negroes, he said, meet requirements for Grand Jury Service.

The court, it is to be noted, is not denying the right of states to fix qualifications for grand jurors, providing those qualifications are within constitutional bounds. It does deny that racial discrimination can be constitutionally exercised in setting up these qualifications.

"For racial discrimination to result in the exclusion from jury service of otherwise qualified groups," the opinion states, "not only violates our constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government."

This is not, of course, the first time that the Supreme Court has clearly and forcefully laid down these clear constitutional principles. But this case further emphasizes what could be expected to happen in a case taken to the Supreme Court on the same grounds as those resulting in the Texas reversal.

There is a strong, implicit, renewed warning, therefore, in this unanimous Supreme Court decision, to all concerned in the selection of our juries who might face the responsibility for a similar reversal in the future.

It is to be noted in this connection that the Texas statute of limitations is one year on the charge of rape involved in that case and that the defendant in the case cannot be reindicted.

RACE BIAS HIT AS HIGH COURT FREES CONVICT

Washington (Wilmington) News

Jury Discrimination Violates Constitution, Justice Black Rules

NOV 30 1940

"Racial discrimination in selection of juries not only violates our constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government."

Thus wrote Justice Hugo Black as the U. S. Supreme Court Monday set aside the conviction of a Houston, Tex., colored man on the grounds that the county discriminated against Negroes in selecting grand juries.

The ruling frees Edgar Smith, 20, who had been convicted and sentenced to life imprisonment on a charge of criminal assault on a white woman. The time limit for a reindictment has expired.

It was the second ruling by Black—who was charged with former Ku Klux Klan connections at the time of his appointment to the court—which granted freedom to colored men.

Used Third Degree

On last Feburary 12, birthday of Abraham Lincoln, the court set aside the conviction of four Florida Negroes on murder charges. In that case, Black's opinion held that confessions forming the basis of the convictions were obtained through third degree methods.

Black's ruling Monday sustained Smith's contention that equal protection of the law guarantees of the Fourteenth Amendment were denied him because Negroes in Harris County, Tex., were excluded from grand jury service on account of their race and color.

Black cited testimony on the Harris County Court records showing that only 5 of the 384 grand jurors who served from 1931 to 1938 were Negroes; that of 512 persons summoned for grand jury duty only 18 were Negroes; that of these 18 the names of 13 appeared as the last man on the 16-man jury list.

"Chance and accident alone could hardly have brought about the listing for grand jury ervice of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service," Black said.

Must be Representative

Juries should be bodies truly representative of the community and the fourteenth amendment requires "that equal protection to all must be given—not merely promised," his opinion said.

"What the fourteenth amendment prohibits is racial discrimination in the selection of grand juries.

"Where jury commissioners limit those from whom grand juries are selected to their own personal acquaintances, discrimination can arise from commissioners who know no Negroes as well as from commissioners who know but eliminate them. If there has been discrimination, whether accompanied ingeniously or ingenuously, the conviction cannot stand."

Absence Of Negroes On Jury Throws Out Murder Indictments

Birmingham (Ala.) News

But Three In Florida To Be Arraigned Again After Seven-Year Span

DEC 12 1940

WEST PALM BEACH, Fla.—(AP) Murder charges against three Negroes who have spent seven years in Florida State Prison death cells have been quashed by Circuit Judge C. E. Chillingworth on grounds there were no Negroes on the Grand Jury that indicted them.

"The total absence of any Negroes upon this jury list indicated an intentional racial discrimination," Judge Chillingworth's order declared Wednesday.

The three, Charles Davis, Jack Williamson and Walter Woodward, were rearrested almost immediately after being granted freedom. State Attorney Phil O'Connell said he would ask the January Grand Jury in Broward County, where the original indictments were returned, to return new indictments.

The trio, together with a fourth defendant, Isaiah Chambers, who was declared insane last February, were charged with slaying Robert Darsey, white fish dealer, in 1933. An indictment against Chambers also was quashed. He has been committed to the state hospital.

The four were convicted three times, twice receiving new trials. Last February the United States Supreme Court reversed the convictions on grounds coercion appeared to have been used in obtaining confessions, admitted as evidence, and ordered another trial.

The fourth trial, scheduled in October, was delayed when S. D. McGill, Jacksonville Negro attorney, attacked the original indictments on grounds Negroes were "consistently barred" from Broward County juries.

JURIES - 1940

Spartanburg S C. Journal
November 28. 1940

Supreme Court Rules

A unanimous opinion of the United States supreme court written by Associate Justice Black held that exclusion of negroes from a Texas grand jury was ground for reversing the conviction of an 18-year-old negro sentenced to life imprisonment for rape. The ruling has the effect of setting the negro at liberty after he served two years in jail, due to the operation of the statute of limitations being one year in Texas; therefore the negro cannot be reindicted.

Justice Black in his opinion stated that the Texas jury law was capable of being administered without racial discrimination, but that the discrimination permitted in selecting grand jurors could be applied to exclude negroes. He held that the 14th amendment prohibits racial discrimination in the selection of grand juries, concluding that "if there has been discrimination, however accomplished, the conviction cannot stand." The justice cited testimony to show negroes had long been excluded from the grand jury of the Texas county (Harris) where the case originated. Negroes, he said, constituted more than 20 per cent of the county's population and almost ten per cent of the poll-tax payers. Of the negro population he estimated from 3,000 to 6,000 fill qualifications for grand jury service.

Since his advent to the highest tribunal of the nation Justice Black has been conspicuous in decisions asserting the basic rights of negroes. In February, 1939, he wrote an opinion saving a Louisiana negro from the death sentence because his race was barred from the jury, as Washington correspondence to the New York Times recalls. Last February he wrote the court's opinion which upset the convictions of four Florida negroes when evidence showed they endured a harsh third degree.

Justice Black, who hails from Alabama, was Franklin D. Roosevelt's first appointee to the supreme court since his tenure in office, and the appointment occasioned a storm of criticism.

TEXAS ATTACK CASE REVERSED

Action Taken Because Negroes Are Barred From Grand Jury

NOV 26 1940

WASHINGTON, Nov. 25—(AP)—The conviction of a Houston, Tex., Negro for assaulting a white woman was reversed by the Supreme Court Monday on a finding that Negroes had been barred from grand juries in the county where he was indicted.

"It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community," said the unanimous decision, delivered by Justice Black.

The court found that although Negroes constitute more than one-fifth of the population of Harris County, Texas, and "a minimum of from three to six thousand of them measure up" to statutory qualifications, only five had served on grand juries from 1931 through 1938, when the defendant was indicted, and none had served in 1937 or 1938.

Freed Completely

The defendant, Edgar Smith, 18, had been sentenced to life imprisonment. The decision apparently had the effect of freeing him completely for George W. Barcus, assistant state attorney general, told the court that the time limit for obtaining a new indictment had expired and thus he could not be retried.

FREEDOM COMING

HOUSTON, Tex., Nov. 25—(AP)—Edgar Smith, 20-year-old Negro, whose life imprisonment conviction on a charge of criminal assault was set aside Monday by the United States Supreme Court, will be freed from the Harris County Jail in a few days.

He has been held since Aug. 1, 1938.

Court attaches here said that since the statute of limitations on the charge is one year in Texas, Smtih cannot be reindicted and, therefore, will be freed as soon as the mandate from the Supreme Court arrives.

Black, in an opinion last Lincoln's birthday upset the conviction of a Florida Negro who was subjected to a "third degree." In Monday's opinion he said that Smith's conviction could not stand if there had been discrimination, however it was accomplished.

For racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government," he wrote.

Two other decisions Monday, in which the court split 6 to 3, represented victories for the government in income tax cases. Justice McReynolds wrote dissenting opinions in which Chief Justice Hughes and Justice Roberts joined. The majority opinions were by Justice Stone.

The first held that Paul R. G. Horst, of Brooklyn, N. Y., was liable for a tax on the income from interest coupons which he had detached from his bonds and transferred to his son as a gift. The son collected the $50,677 interest and included it in his own tax returns.

Agent Found Liable

The second found that a life insurance agent, Gerald A. Eubank, of New York, was liable for a tax on $15,612 of renewal commissions on policies sold although he had assigned the commissions to a corporate trustee.

The government contended that a transaction like Horst's would afford taxpayers "a ready means by which to escape" high surtax rates and that if Eubank's position were sustained, "the opportunity for tax avoidance would be alarming."

"The import of the statute is that the fruit is not to be attributed to a different tree from that on which it grew," Stone's opinion concluded.

It asserted that a taxpayer receives the benefit of income even though he may not receive the actual money. He can make "such use or disposition of his power to receive or control the income as to procure in its place other satisfactions which are of economic worth."

The income actually is "realized" by the assignor in such cases, the opinion continued, "because he who owns or controls the source of the income also controls the disposition of that which he could have received himself and diverts the payment from himself to others as the means of procuring the satisfaction of his wants."

The dissenting opinions declared in both cases that the transferred income was placed completely beyond the donor's control.

The court refused to review a Georgia Supreme Court decision which state officials asserted would "seriously endanger" the administration of unemployment compensation programs of 33 states. The decision barred the state from lumping concerns under the same ownership into a single unit to determine whether there were enough employes to warrant the collection of assessments under the unemployment compensation statute.

A 1937 Georgia law permitted assessments against such concerns if, together, they employed eight or more persons.

The court also declined to review a Maine Federal Court ruling that brokers are liable for misrepresentation under the 1933 "truth in securities" act even when the securities they sell are owned by others.

Nashville Tenn Banner
November 25. 1940

Jury Exclusion Of Negroes Hit By High Court

Washington, Nov. 25 — (AP) — The Supreme Court ruled today that racial discrimination resulting in the exclusion of qualified Negroes from Grand Jury service not only violated the Constitution "but is at war with our basic concepts of a democratic society and a representative government."

Justice Black delivered the unanimous decision, which set aside the conviction of a Houston, Texas, Negro sentenced to life imprisonment for criminally assaulting a white woman.

The Negro, Edgar Smith, contended he had been denied constitutional rights because members of his race had been "systematically excluded" from Harris County Grand Juries.

Justice Black asserted that "it is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community."

Explaining that only five of the 384 Grand Jurors who served in Harris County from 1931 through 1938 were Negroes, Black added:

"Chance and accident alone could hardly have brought about the listing for Grand Jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service.

"Nor could chance and accident have been responsible for the combination of circumstances under which a Negro's name, when listed at all, almost invariably appeared as Number 16, and under which Number 16 was never called for service unless it proved impossible to obtain the required jurors from the first fifteen names on the list."

The Supreme Court refused to review a decision which Georgia officials contended would "seriously endanger" the successful administration of unemployment compensation programs of thirty-three states.

The decision, by the Georgia Supreme Court, barred the state from treating two or more concerns under the same ownership or control as a single unit in determining whether there were sufficient employes to warrant the collection of unemployment compensation assessments.

Before adjourning for two weeks, the tribunal also declined to pass on a Circuit Court ruling that brokers selling securities owned by others are liable for misrepresentation under the 1933 "Truth in Securities" Act.

The court also delivered two opinions which the Government said would thwart the avoidance of income taxes.

In one opinion the tribunal ruled that the Federal Government might collect an income tax from the owner of bonds, when the interest coupons had been transferred to a son and the latter had included the income in his tax return. The decision applied specifically to Paul R. G. Horst of Brooklyn, N. Y.

In the other decision the court held that a life insurance agent, Gerald A. Eubank of New York City, who had assigned to others renewal commissions on policies sold, was subject to a federal income tax on the commissions.

Justice Stone delivered the two 6 to 3 tax decisions. Justice McReynolds wrote a dissenting opinion in which Chief Justice Hughes and Justice Roberts concurred.

Final decisions were postponed at least until December 9 on litigation involving regulation of the nation's hydroelectric plants and two freedom of speech cases.

Tallahassee, Fla. Democrat
December 9, 1940

Negro Jurors

Out of the case of the three negroes granted a new trial by the United States Supreme Court because the court held their confessions were obtained under duress, has sprung a situation involving all future trials and convictions of negroes in the state, unless something is done about it.

Just a few days ago, Justice Black, the same justice who wrote the decision in the case of the three negroes, wrote another opinion reversing the conviction of a negro in Texas, because negroes are excluded from jury service in that state. This decision was offered when the three Florida negroes came up for retrial at West Palm Beach Tuesday, as grounds for dismissal of the charge, it being alleged that no negroes are on the jury lists of Broward county. The judge reserved his decision.

Negroes are not exactly excluded from jury service in Florida state courts, but they practically are so excluded, for the reason that no names of negroes are placed in the boxes from which jurors are drawn. If any negro convicted in a country where this exclusion obtains goes to the United States Supreme Court, his conviction undoubtedly will be set aside, under the identical ruling made by Justice Black in the Texas case.

The same question figured extensively in the notorious Scottsboro case, and was urged by Leibowitz, the astute defense counsel, as grounds for throwing the cases out of court.

The obvious remedy, of course, is that those charged with the duty of supplying names for jury duty—in this county, two Jury Commissioners—put in one or more names of negro citizens. If one of these should happen to be drawn, the attorneys in the case could exercise the privilege of objecting to the juror. This probably would meet the Supreme Court requirement. Unless this is done, there'll probably be frequent cases of nullified convictions.

Negro jurors are listed and frequently drawn in the United States Courts in this state.

—Tampa Tribune

Bradenton, Fla., Herald
December 16, 1940

The Negro On The Jury

The Federal Supreme Court, acting first in a Texas case and more recently in a case originating in this state, has set aside convictions of negroes charged with crimes, on the ground that they were not legally indicted or tried for the reason that in neither state are persons of African descent drafted for jury duty. This is declared to be in violation of the federal constitution.

Doubtless every Southern state, and most of those in the West, are guilty of discrimination in the matter of overlooking the Negro when it comes to jury duty. It remained for a recently appointed Southern member of the nation's highest court—Mr. Justice Black, born and reared in Alabama's "black belt"—to point to alleged illegal indictments and convictions in Texas and Florida.

It is going to be a bit difficult to bring the Southern states into line in this matter of selecting juries. The average black man in the South probably would, if allowed to have his way, rather be tried by a jury of white men than by a jury of his own color, or by a mixed jury. However, if the work of the courts is to be questioned and upset now that Justice Black has "discovered" something he must have known about the past two-score years, and it is to be invoked time without number, mixed juries will be necessary.

One wonders as to the status of the thousands of persons convicted by white juries in this and other states in past years, and who yet remain in penitentiaries. Are they being illegally detained? We presume they are, if they were deprived of their constitutional rights because no black men's names were on the jury lists and no black men sat on the juries or were called to serve.

DON'T BE TOO HARD ON SOUTH FOR JURY BAN, HOBBS PLEADS

Courier-Journal, Louisville, Ky.
Pittsburgh Post

DEC 14 1940 DEC 14 1940

WASHINGTON, Dec. 12—The whole South is not to be condemned for the practice of excluding colored persons from jury duty, which the Supreme Court, in reversing the conviction of Edgar Smith on a rape charge, found had prevailed in Harris County, Texas, Representative Sam Hobbs, Democrat, of Alabama, declared in the House last Thursday.

Mr. Hobbs pointed out that there is only one case in which the Supreme Court has recently held that equal protection of the laws was denied through exclusion of colored persons from jury service.

"I do not think there is anything in the decision of the Supreme Court which, rightly interpreted, criticizes or condemns the laws of Texas, except in one respect, and that is that the law of Texas," he said, "leaves almost unlimited discretion to the jury commissioners, and the Supreme Court says in this case that that discretion was abused in Harris County. It may be that the discretion is too wide and deep in the Texas statute.

"That is not true in Alabama and, I think, in other Southern states. Our law in Alabama, which has been considered a model, and which in my deliberate judgment, after a careful study of the jury systems of every nation on earth, is the best jury law ever devised by man, specifically requires a nonpartisan, nonpolitical jury commission, the members of which can have no other office and who cannot be employed in any other public office, to place in the jury box and on the jury roll or jury service, both grand and petit, every male adult who possesses the qualifications there specified, to wit, that he is a man of character and intelligence, esteemed throughout his community for his honesty, intelligence, sound judgment and high character.

"Every man who possesses those qualifications is a juror; wholly without regard to race or color. Our jury commissioners sit as a court, oath-bound, and charged with the single duty of keeping the springs of justice pure. There is no discretion in our jury commissioners.

"The law prescribes the qualifications of those who are to sit in judgment on their fellows. Any man who meets the fixed qualifications must be listed for jury service.

"Some commissioners may have been recreant to their trust. I know of no such case. But, if so, neither Alabama, nor the South, should be held accountable."

MURDER CHARGES QUASHED BECAUSE OF JURY PROCESS

Times-Picayune, New Orleans, La.

Failture to Include Negro Members in Panel Is Reviewed

DEC 13 1940

(The Associated Press)

West Palm Beach, Fla., Dec. 12.—Circuit Judge C. E. Chillingworth Wednesday quashed a murder indictment pending since 1933 against three Pompano Negroes on the ground that there were no Negroes on the grand jury which indicted them.

The Negroes, Charles Davis, Jack Williamson and Walter Woodward, were convicted of the murder of Robert Darsey, a Pompano fish dealer, in 1933 along with a fourth defendant, Isiah Chambers, declared insane several months ago and committed to an asylum. The Negroes were rearrested immediately.

State Attorney Phil O'Connell said he would ask the January grand jury to reindict them

The convictions of the Negroes were reversed by the United States supreme court last February on the grounds that confessions admitted at the trial were obtained under duress.

Judge Chillingworth's order declared that "the total absence of any Negroes upon this jury list indicates an intentional racial discrimination," and cited the guarantee of the federal constitution for equal protection for all races under the law.

"The proof shows that for a long period of time no Negroes were placed on the jury list."

JURIES- 1940

On Jury

LOUIS BELDEN, who broke a forty year precedent in Wilmington, N. C. by being the first Negro to serve on a superior court petit jury in that period of time in Wilmington. Mr. Belden is the father of John O. Belden, advertising manager of the Journal and Guide.

He is a highly respected retired government employee.

SERVED ON JURY

Armour Blackburn, who became the first colored person ever to serve on a Federal court jury for the district when the March term of the United States District Court convened at Frankfort, Kentucky, this week with Judge H. C. Ford presiding. A well known business man, Blackburn is active in the church, school and civic life of Frankfort and his grocery store is considered one of the finest in central Kentucky owned and operated by Negroes.—Kentucky State photo.

FIRST JURYMEN

First Race jurymen to serve in a federal court in eastern Kentucky. They were summoned for the March session and served in the court of Judge H. C. Ford. Left to right: Arthur Grisly, Booneville; Elmer E. Williams, Hazard; Barney Crawford, Tallega, and Tom Wilson, Jackson, Ky.

Implicit Warning

In an unanimous decision, the Supreme Court of the United States Monday reversed the conviction of a Negro sentenced to life imprisonment in Texas on the ground that there had been discrimination against Negroes in Grand Jury selection.

"Here," said the opinion handed down by Justice Black, "the Texas statutory scheme is not in itself unfair; it is capable of being carried out with no racial discrimination whatsoever. But by reason of the wide discretion permissible in the various steps of the plan, it is equally capable of being applied in such a manner as practically to proscribe any group thought by the law's administrators to be undesirable. And from the record before us the conclusion is inescapable that it is the latter application that has prevailed in Harris County.

"Chance and accident alone could hardly have brought about the listing for Grand Jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service."

Justice Black pointed out that the Texas court clerk had testified that in 1931-1938 inclusive, only five of 384 grand jurors were Negroes. A minimum of 3,000 to 6,000 Negroes, he said, meet requirements for Grand Jury Service.

The court, it is to be noted, is not denying the right of states to fix qualifications for grand jurors, providing those qualifications are within constitutional bounds. It does deny that racial discrimination can be constitutionally exercised in getting up these qualifications.

"For racial discrimination to result in the exclusion from jury service of otherwise qualified groups," the opinion states, "not only violates our constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government."

This is not, of course, the first time that the Supreme Court has clearly and forcefully laid down these clear constitutional principles. But t. case further emphasizes what coul be expected to happen in a case taken to the Supreme Court on the same grounds as those resulting in the Texas reversal.

There is a strong, implicit, renewed warning, therefore, in this unanimous Supreme Court decision, to all concerned in the selection of our juries who might face the responsibility for a similar reversal in the future.

It is to be noted in this connection that the Texas statute of limitations is one year on the charge of rape involved in that case and that the defendant in the case cannot be reindicted.

Free 3 Negroes In Florida; Hit Jim-Crow Jury

Daily Worker
New York, N.Y.
DEC 13 1940

WEST PALM BEACH, Fla., Dec. 12.—Murder charges against three Negroes who have spent seven years in Florida State Prison death cells have been quashed by Circuit Judge C. E. Chillingworth because "the total absence of any Negroes upon this jury list indicated intentional racial discrimination."

The three, Charles Davis, Jack Williamson and Walter Woodward, were re-arrested almost immediately after being granted freedom yesterday. State Attorney O'Connell said he would seek new indictments.

Durham, N. C., Morning Herald
July 16, 1940

Safegudrding America Main Job, Judge Tells Grand Jury

Judge Henry Stevens Of Warsaw, Beginning Duty Here, Gives Charge Lasting An Hour—Negro Among Nine New Members Sworn In For Grand Jury

Judge Henry L. Stevens of Warsaw charged the Superior Court Grand Jury yesterday that "we all ought to make our first business the safeguarding of America." The judge declared that the United States is inadequately defended.

A Negro, C. T. Willias of the North Carolina College for Negroes, became the first colored grand juror yesterday in "at least 24 years," according to court officials. Willis was included among the nine new members added to the investigating body.

M. J. Paschall was chosen foreman succeeding H. A. Myers who is retiring from the body.

Judge Stevens, former National Commander of the American Legion and an ex-service man, delivered an hour-long charge to the jury during which time he touched upon the Grand Jury's duty to "be on the alert against any sort of doctrine" which might "tear down" the Federal Government, upon the national and State crime situation, and upon the privileges and rights enjoyed in America which are not now enjoyed in many countries in Europe and elsewhere.

"No man living who has ever seen war, wants war," Judge Stevens told the Grand Jury " I hate war. Every man who has heard the whine of bullets hates war. But there is something I hate worse than war and death." This, he said is the possible destruction of wife and family and the destruction of the "stones" upon which this country is built.

Speaking of this country's needs, the jurist commented, "Every one of us needs a re-baptism . . . a re-baptism nationally. . . . They need to be plunged under again so they may be revivified."

Sheriff E. G. Belvin said yesterday he believed a Negro has previously served on a Durham Grand Jury, but that it was "years ago." Recently Negroes' names were on a list from which a Superior Court jury was drawn, but they did not serve. Some court officials failed to recall today that a Negro ever before has served on a Durham County Grand Jury Clerk of Superior Court W. H. Young did not remember one having so served within "the last 24 years."

Early in his charge, the former legion commander advised the jurymen to "be on the alert for the spread of any sort of doctrine that might tear down the United States Government," adding that, "I sometimes wonder if the people of America are fully cognizant and fully appreciative of some of the things America stands for."

Judge Stevens then pointed to a number of privileges enjoyed in this county which are not enjoyed abroad, including those provided for in the Federal Bill of Rights. "Here we have the right to assemble—free and we do not have to have a permit from a local or other authority," the said, adding that people have the "God-given right" to meet to discuss problems of interest, and "freedom of speech is coupled with it."

"But very few people under the sun today have that right? You wouldn't have it in Germany, Russia, Japan or France within the last few weeks."

Judge Stevens also mentioned the right to worship God according to dictates of one's conscience, saying that no such thing as God is recognized by governments in some countries abroad now.

"Would any of us," he queried, "descend so low as to permit any column—Fifth Column or otherwise—to come here (to America) and take away any of these powers?"

"Here (in America) we ought to quit tolerating little boys and girls . . . hardly dry behind the ears, if you'll pardon the expression, advancing some theory of government to replace our system which has operated hundreds of years," Judge Stevens said. He added that anyone "openly saying" he would not fight for the United States in wartime "isn't worthy to enjoy" the results of peace.

Turning to the status of national defense, the jurist declared that when America's "vast coastlines" are considered, "we are utterly undefended."

We have, the judge said, about 3,500 airplanes in this country whereas Hitler "employed 6,000 in one putsch." America has 400 to 500 tanks compared with 15,000 to 20,000 German tanks, he showed, adding, "tanks and airplanes up to now have won the war for Hitler."

There is a need for 90 millimeter guns and America has only one, he said.

"We have a fine navy but only a one-ocean navy," the jurist asserted. "We need exactly double what we have . . . These are things that I think ought to be brought home to the people. I'm sure Mr. Hitler knows them and Mussolini has known them for some time."

"We all ought to make our first business that the safeguarding of America," Judge Stevens said. Americans, he said, should thank God for what they have.

Turning to the national crime situation, the jurist said that "we have here in America what might be termed domestic decay," Every 22 seconds there is a serious crime committed in the country, he pointed out, and in the course of a day from sunrise to sunset 37 persons are murdered in the country. "Every 39 minutes, he said, "a death occurs in this country by criminal violence."

Citing 1937 national statistics showing 1,500,000 major crimes such as murder, criminal assault, robbery, burglary, and aggravated assault, he said the national crime bill last year was $15,000,000,000. Admitting that he did not think he or the jurors could visualize $1,000,000 much less $15,000,000,000, he said that it results in a per capita annual cost of $120.

Citing North Carolina's crime totals, the judge remarked there were 26,734 criminal cases disposed of in

As to freedom of speech, he asked, "Has it ever occurred to you inferior courts last year and 13,473 Superior Court cases similarly disposed of during the period. He listed them according to nature of the crime, and the group included 2,318 cases of larceny, 293 of manslaughter, 1,173 of assault and battery with deadly weapons, 402 of assault and battery, and 356 of second degree murder.

"After all is said and done, perjury is the malicious false swearing by a person under oath in some judicial or quasi-judicial proceedings," he said, adding if he is "guilty" of having a special pet abomination, it is that of perjurer.

"The first one I catch and everyone I catch (giving perjured testimony)," he said, "I'm going to send a bill (of indictment) through Solicitor W. H. Murdock to you (the Grand Jury)." He finished by remarking if that person is convicted, "May God have mercy on his soul. I won't. I can give from one day to 10 years for such an offense."

New Grand Jurors selected yesterday are H. D. Norris, 911 Hale Street; Walter A. Ritch, Route 4, Durham; W. Howard Perry, 526 Holloway Street; D. C. Upchurch, Route 3, Durham; Myrtice Ricks, 1005 Worth Street; W. E. Elliott, Route 3, Durham; Jesse N. Carden, 1300 B Street; A. L. Bowen, 2718 Hillsboro Road; and C. T. Willis, 1619 Fayetteville Street.

Hold overs from the old Grand Jury are: A. Mangum Tilley, Route 2, Rougemont; D. L. Gery, 1811 West Pettigrew Street; M. J Paschall, 921 West Markham Avenue; E. L. White, 308 West Chapel Hill Street; D. P. Deaver, 208 Forest Wood Drive; H. T. Ward, 1101 Morning Glory Avenue; Alston Mann, Route 1, Durham; O. C. Mitchell, Route 6, Durham; and William A. Lanier, Route 4, Durham

High Court Sets Aside Negro's Conviction

NOV 26 1940

Discrimination Against Negroes for Jury Cited as Cause

WASHINGTON, Nov. 25 (UP).—The Supreme Court, in a unanimous opinion written by Justice Hugo L. Black, today set aside the conviction of Edgar Smith, Harris County Tex., Negro on the ground that the county discriminated against Negroes in selecting Grand Juries.

"For racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it," Black wrote, "but is at war with our basic concepts of a democratic society and a representative government."

The ruling freed Smith, who had been convicted of rape.

SECOND RULING

It was the second time within a year that the court — in opinions written by Black—had granted freedom to Negroes. On last Feb. 12—brthday annversary of Abraham Lincoln, the Emancipator—the court set aside the conviction of four Florida Negroes on murder charges. In that case Black's opinion held that their confessions were obtained by third degree.

In another action today, the tribunal refused to take up a Georgia Supreme Court decision holding unconstitutional the so-called "common control" provisions of that state's unemployment compensation law. The action, which makes the Georgia high court decision final, furnished a strong precedent for tribunals in at least 32 other states having laws similar to the Georgia statute.

In the Harris county case, Smith had contended in his appeal to the high court that far fewer than the proportionate number of qualified Negroes were called for jury service, that the practice was "systematic" in Harris County.

Black pointed out in the opinion that 20 per cent of the county's population and 10 per cent of its poll-tax payers are Negroes. Of these, he said, a minimum of 3,000 to 6,000 were fully qualified under Texas law for jury service. Black quoted statistics given by the court clerk to the effect that only five of 384 Grand Jurors who served from 1931 through 1938 were Negroes.

MUST BE REPRESENTATIVE

"It is part of the established tradition in the use of juries as instruments of public justice," he wrote, "that the jury be a body truly representative of the community. . . ."

Asserting that the fact written words of a state's laws hold out a promise that no racial discrimination will be practiced "is not enough," Black held that "the Fourteenth Amendment requires that equal protection to all must be given—not merely promised.

"Here, the Texas statutory scheme is not in itself unfair; it is capable of being carried out with no racial discrimination whatsoever. But by reason of the wide discretion permissible in the varous steps of the plan, it is equally capable of being applied in such a manner as practically to proscribe any group thought by the law's administrators to be undesirable. And from the record before us the conclusion is inescapable that it is the latter application that has prevailed in Harris county. . . ."

The Georgia unemployment tax, applicable to firms employing eight or more persons, carries a "common control" section which provides that if two or more companies under common ownership—direct or indirect—employ eight or more persons they are subject to the levy regardless of whether one or both individually employ less than eight.

JUDGE UPHOLDS HUGH PIERRE INDICTMENT

EDGARD, La., Aug. 8.—(ANP)—Following the sustaining of the fourth indictment of Hugh Pierre who murdered a deputy sheriff four years ago, a new jury was selected for the new trial after four days of legal wrangle.

Since the first conviction of Hugh Pierre to a death sentence and the order of a new trial by the United States Supreme Court because there were not enough Negroes in panel from which the trial jury was chosen, three indictments were quashed against him. After both, the defense and the state, expressed satisfaction with the selected jury, the case which has been four years in the making went to trial last Thursday to determine whether or not Hugh Pierre was guilty of murder in the killing of a constable four years ago.

One Negro on Jury

Sitting on the jury which will have the final say over his life or death is one Negro and 11 whites. The Negro, Thomas Polk, the first talisman called when the selection of jury began last Monday, was also the first Negro to serve on a criminal jury in St. John the Baptist Parish since 1892.

When the court adjourned, there were eight white men and three Negroes, but two of the Negroes were challenged and replaced by two employes of the Godchaux plantation, who were white. The Negro's presence on the jury, besides being historical, is significant because the United States Supreme Court reversed the previous conviction of Pierre on the grounds that Negroes did not have the proper representation on the jury that convicted him.

DEATH AGAIN METED NEGRO

EDGARD, La., Aug. 8—(AP)—Hugh Pierre, 29-year-old crippled Negro whose first death sentence was annulled by the U. S. Supreme Court on the racial issue was resentenced today to hang here for the slaying of a white man. Nearly four years ago the Supreme Court reversed the case on the grounds that there were no Negroes on the Grand Jury which indicted Pierre. Two later indictments were quashed for the same reason. In his second trial Pierre was convicted of murder of Ignace Roussell, a constable, on Aug. 1 by a jury which included a Negro among its membership. Sentence was pronounced today by Judge Robert L. Rivarde. Date of execution was to be set by the governor.

WIN RIGHTS FOR JURORS IN KANSAS TOWN

COFFEYVILLE, Kans.—Jurors for the September term of the District Court of Montgomery County, Kansas, sitting at Independence, Kansas, were drawn August 9, 1940 at the County Clerk's office in the courthouse at Independence, Kansas.

Mr. Dennis Hunigan, 502 East Fifth Street, Coffeyville, Kansas, was drawn as a regular juror. Mr. Hunigan is very prominent in Negro business, church and civic affairs and is the proprietor and manager of the Hunigan Grocery Store, located at 504 East Fifth Street, Coffeyville, Kansas.

This is a signal victory for the Negroes of Coffeyville, as the Negroes of this city for the last fifteen or twenty years have been denied the privilege to serve as jurors in the District Court of Montgomery County, sitting both at Independence and Coffeyville.

Attorney Earl Thomas Reynolds, who established a law office at 719½ Union, Etchen Building, Coffeyville, in October, 1939, for the general practice of law, was unrelenting in his fight to secure for the Negroes of Coffeyville, the privilege to serve as jurors in the District Court of Montgomery County, Kansas. Attorney Reynolds formerly served as a regular assistant attorney for the Kansas State Highway Commission with an office in the Highway Commission, being the first Negro attorney in Kansas to serve in that position and made an outstanding record with the Kansas State Highway Commission.

Attorney Reynolds assisted by the Negro Chamber of Commerce of Coffeyville, of which Mr. Booker Smith is president; Attorney Reynolds, secretary and chairman of the Board of Directors; Richard L. Drake, treasurer; Oceay Jones and A. Hooker, members of the board of directors, in May 1940 were successful in having Mayor J. D. Byers of Coffeyville submit the following names of Negro citizens of Coffeyville on the list submitted from Coffeyville to make up the county jury panel: P. W. Hughes, Dennis Hunigan, R. L. Johnson, George Huff ,Cicerio Johnson, Richard L. Drake, Booker Smith and Edwin Chambers.

This placed the above names in the county jury panel; their names might be drawn when jurors of the district of Montgomery County, Kansas are drawn. On the first drawing after the Negro names from Coffeyville were submitted, Mr. Dennis Hunigan was drawn for jury service. Mr. Hunigan will report for jury duty September 23, at the District Court of Montgomery County, sitting at Independence.

Make All Juries Representative

NOV 15 1940

We refuse to call it prejudice. We choose to say it is custom—that hard nut to crack—which keeps state judicial districts and the U. S. courts in certain states from applying the rule laid down in the Scottsboro cases. Over and over again Alabama tried these boys, only to have its decisions set aside by the United States supreme court. The court made the point that the accused could not be sure of a fair trial except included in the juries there were members of their own race.

Alabama went through the motions required by law when it called all-white juries. But race prejudice is a fact too well established for that state to convince the supreme court that such juries are without bias. The very fact that it called no Negroes was prima facie evidence that it had no intention of playing fair.

What Alabama did still goes on in places. In a recent case in a federal court involving a Negro plaintiff, the whole procedure was challenged on the ground that a proper jury was not possible under the system used. In Kansas City, where grand juries bring indictments, no Negro has ever been called to serve. The judges who take turns in choosing grand jurymen cannot think no Negro is qualified for a service that every white man called performs satisfactorily.

Race superiority as insisted upon by Germans in Europe has exactly as much logic and fact to support it as over here. We Americans, seeing the horrors done in its name to Germany's neighbors and other nationalities, in a frenzy of self-righteousness begin talk about democracy as the solution of men's relations with each other. We talk and stop with talking, while custom rings in the same old all-white jury that our own high court has said is the very essence of bigotry and intolerance.

Must we too follow our bad habit to its inevitable end, or have we wit enough to let our intelligence lead us into conforming to the spirit and letter of our law? Jury commissioners in states like Missouri have Scottsboro to tell them what to do. They should heed.

Bar On Negro Jurors Voids Murder Charge

DEC 22 1940

WEST PALM BEACH, Fla., Dec. 19—(ANP)—Ruling that the lack of Negroes on the grand jury "indicated an intentional racial discrimination," Circuit Court Judge C. B. Chillingworth Thursday quashed murder charges against three men who have spent seven years in Florida state prison death cells. State's Attorney Phil O'Connell had the men rearrested and said he would ask for new indictments.

A fourth defendant was declared insane last February. The four were convicted three times, in the killing of Robert Dorsey, a white fish peddler. Last February the United States Supreme court reversed the convictions, holding that coercion appeared to have been used in obtaining confessions.

The fourth trial, scheduled in October, was delayed when the defense attacked the original indictments on the ground that Negroes had been "consistently barred" from Broward county juries.

Bar Negroes on Jury In Oklahoma City Trials

Daily Worker
New York N.Y.

Prosecution Also Rejects Union Farmer; Alan Shaw, Communist Leader, Is Second to Be Tried for 'Criminal Syndicalism'

NOV 23 1940

By Robert Wood
(Special to the Daily Worker)

OKLAHOMA CITY, Okla., Nov. 22.—Showing fear of the judgment of the common people in the trial of Alan Shaw, Oklahoma City Communist Party secretary, the state dismissed on peremptory challenges the only Negro jurors included in this month's jury panel.

Among the other jurors rejected by the state was a member of the Oklahoma Farmers Union who said, while being questioned, that he thought the advocacy of higher old age pensions was a very fine thing. This expression of opinion was sufficient to make the juror suspect in the eyes of the prosecution.

Keeping Negroes and a union farmer off the jury sets the pace for the entire prosecution. For some three hours today John Eberle, state's attorney, belabored the jury with the details of what he was going to prove to them about the accused Alan Shaw. Included in the startling resume were promised details of the fact that the Communists persisted in proposing equality for the Negro people; that Communists were against participation in imperialist war (defined by Mr. Eberle as "war to defend one's country"), and that Alan Shaw would be proven to be a member of the Communist Party.

NO OVERT ACT

In these tedious hours no single fact was proffered to prove that Shaw ever advocated or committed an act of violence. It was clear that hundreds of books and pamphlets dragged into the courtroom to railroad Robert Wood to ten years at the state penitentiary would be put through their paces again in the Shaw trial.

The task of progressive people in the next days is to send protests to Lewis R. Morris, County Attorney, Oklahoma City, Okla., and by sending defense funds to the International Labor Defense, 112 E. 19th St., New York City, and the Oklahoma Committee to Defend Political Prisoners, Room 600, Savings Building, Oklahoma City.

Charlotte, N. C., News
November 25, 1940

Upholds Right Of Negroes To Serve On Grand Juries

Supreme Court Rules in Setting Aside Texas Death Sentence

WASHINGTON—(AP) — The Supreme Court ruled today that racial discrimination resulting in the exclusion of qualified Negroes from Grand Jury service not only violated the Constitution "but is at war with our basic concepts of a democratic society and a representative government."

Justice Black delivered the unanimous decision, which set aside the conviction of a Houston, Tex., Negro sentenced to life imprisonment for criminally assaulting a white woman.

The Negro, Edgar Smith, contended he had been denied constitutional rights because members of his race had been "systematically excluded from Harris County Grand Juries.

MUST BE REPRESENTATIVE

Justice Black asserted that "It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community."

Explaining that only five of the 384 grand jurors who served in Harris County from 1931 through 1938 were Negroes, Black added:

"Chance and accident alone could hardly have brought about the listing for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service.

"Nor could chance and accident have been responsible for the combination of circumstances under which a Negro's name, when listed at all, almost invariably appeared as No. 16, and under which No. 16 was never called for service unless it proved impossible to obtain the required jurors from the first fifteen names on the list."

REVIEW DENIED

The Court refused to review a decision which Georgia officials contended would "seriously endanger" the successful administration of unemployment compensation programs of 33 states.

The decision, by Georgia Supreme Court, barred the State from treating two or more concerns under the same ownership or control as a single unit in determining whether there were sufficient employees to warrant the collection of unemployment compensation assessments.

Before adjourning for two weeks, the tribunal declined to pass on a circuit court ruling that brokers selling securities owned by others are liable for misrepresentation under the 1933 "Truth in Securities" Act.

TAX DECISIONS

The court also delivered two opinions which the Government said would thwart the avoidance of income taxes.

In one opinion the tribunal ruled that the Federal Government might collect an income tax from the owner of bonds, when the interest coupons had been transferred to a son and the latter had included the income in his tax return. The decision applied specifically to Paul R. G. Horst of Brooklyn, N. Y.

In the other decision the court held that a life insurance agent, Gerald A. Eubank of New York City, who had assigned to others renewal commissions on policies sold, was subject to a Federal income tax on the commissions.

Justice Stone delivered the two six to three tax decisions. Justice McReynolds wrote a dissenting opinion in which Chief Justice Hughes and Justice Roberts concurred.

Final decisions were postponed at least until Dec. 9 on litigation involving regulation of the nation's hydroelectric plants and two fredom of speech cases.

Wilson, N. C., Daily Times
November 25, 1940

HIGH COURT RULES AGAINST RACIAL DISCRIMINATIONS

(Washington, Nov. 25—(AP)—The Supreme Court ruled today that racial discriminations resulting in the exclusion of qualified negroes from grand jury service not only violated the constitution but "is at war with our basic concepts of a democratic society and a representative government."

Justice Black delivered the unanimous decision which set aside the conviction of a Houston, Texas, negro sentence to life imprisonment for criminally assaulting a white woman.

The negro, Edgar Smith, contended he had been denied constitutional rights because members of his race had been "systematically excluded" from Harris county grand juries.

Justice Black asserted that "it is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community."

The court refused to review a decision which Georgia officials contended would "seriously endanger" the successful administration of unemployment compensation programs in 33 states.

The decision by the Georgia Supreme court barred the state from treating two or more concerns under the same ownership or control as a single unit in determining whether there were sufficient employees to warrant the collection of unemployment compensation assessments.

Jacksonville, Fla., Times-Union
November 27, 1940

Negro Is Freed on High Court Ruling

Tony Ingram, negro, in view of a Supreme Court decision to the effect that there was insufficient evidence presented to a Circuit Court jury to warrant a manslaughter conviction, yesterday walked free from the Criminal Court of Record courtroom.

The high tribunal ordered the decision of the lower court reversed and so the case was passed on to the Criminal Court. After conferring with State's Attorney William A. Hallowes III, who prosecuted the man in the Circuit Court, and the investigating officials, County Solicitor Wayne E. Ripley found there would be no further evidence available against Ingram. He therefore nolle prossed the manslaughter information, and Judge Bryan Simpson ordered the negro's release.

JURIES* 1940

Tampa, Fla Tribune -
December 7, 1940

Negro Jurors

Out of the case of the three negroes granted a new trial by the United States Supreme Court because the Court held their confessions were obtained under duress, has sprung a situation involving all future trials and convictions of negroes in the state, unless something is done about it.

Just a few days ago, Justice Black, the same Justice who wrote the decision in the case of the three negroes, wrote another opinion reversing the conviction of a negro in Texas, because negroes are excluded from jury service in that state. This decision was offered when the three Florida negroes came up for retrial at West Palm Beach Tuesday, as grounds for dismissal of the charge, it being alleged that no negroes are on the jury lists of Broward county. The Judge reserved his decision.

Negroes are not exactly excluded from jury service in Florida state courts, but they practically are so excluded, for the reason that no names of negroes are placed in the boxes from which jurors are drawn. If any negro convicted in a county where this exclusion obtains goes to the United States Supreme Court, his conviction undoubtedly will be set aside, under the identical ruling made by Justice Black in the Texas case.

The same question figured extensively in the notorious Scottsboro case, and was urged by Leibowitz, the astute defense counsel, as grounds for throwing the cases out of court.

The obvious remedy, of course, is that those charged with the duty of supplying names for jury duty—in this county, two Jury Commissioners—put in one or more names of negro citizens. If one of these should happen to be drawn, the attorneys in the case could exercise the privilege of objecting to the juror, This probably would meet the Supreme Court requirement. Unless this is done, there'll probably be frequent cases of nullified convictions.

Negro jurors are listed and frequently drawn in the United States Courts in this state.

Negroes to the Grand Jury

DEC 20 1940

Jackson county is going to have the experience of that southern community which had a convicted Negro freed because the indictment was the work of an all-white grand jury. Ever since the Scottsboro decision, the requirement has been that juries represent a cross section of the population. More recently the supreme court made it clear that this representative requirement applies to grand juries too.

Communities like ours go ahead on the old plan though no sound reason can be advanced why Negroes should not be on grand juries. They make good in the jury service to which they are already admitted. They will make good on grand juries both state and federal.

It is in the highest degree desirable that at least one Negro be on every grand jury in Jackson county. Besides the authority to investigate charges of crime, the grand jury here has the public institutions under scrutiny, some of which are for Negroes and managed by Negroes. Lack of a sympathetic and interested juryman has already led to some blundering in the grand jury's handling of them and it will blunder again unless the circuit judges make a habit of including at least one Negro.

Though an accused Negro may not charge that prejudice prevails here such as led to conviction of the Scottsboro boys, understanding of his point of view is neccessary to judge his alleged crime, so long as the law takes into consideration the motive as well as the act. Therefore though active prejudice be lacking, ignorance, its cousin, defeats justice.

The continued ignoring of Negroes for grand jury service is not to be excused. Judges, knowing the law, should act in accordance with it.

Negroes May Serve On Grand Jury In Los Angeles In '41

Black Dispatch
Oklahoma City, Okla.

DEC 28 1940

LOS ANGELES.—(ANP)—For the first time in many years one and possibly two Negroes may serve on the 1941 grand jury, following the drawing of names last Thursday.

Dr. A. J. Booker, one of the West's most successful physicians, and civic leaders, and Floyd C. Covington, dynamic secretary of the Urban league, are the two prospects who have an excellent chance of serving.

Booker's name was offered by Judge Hubert Scott, and Covington's by Judge R. Ray Schauer, both of whom enjoy the highest respect of the Negro citizenry, and who long have had reputations for being interested in the welfare of the group.

Names of prospective grand jurymen are drawn by lot from the number offered by the judges of the various districts. Of the 35 chosen, 10 are finally named by the judges to serve throughout the year. Due to its importance to civic affairs, and becalse of scandals that have surrounded certain grand juries in the past, the method of selection is aimed at absolute fairness and impartiality. However, the question of race can still have a bearing after it comes to the point of each of the final 10 having to prove satisfactory to the majority of the selecting body.

Norman Houston, secretary-treasurer of the Golden State Mutual Insurance Co., was named by Judge John Beardsley last year, but he did not name him or any other Negro this year. Both Covington's and Booker's names were offered last year by the same judges. This was the first time for three years that Negroes' names had even been presented. ocal citizens are hoping fondly that one or both of them are seated as representatives of the group.

Text of Supreme Court Decision in Texas Case

The text of the opinion follows: DEC 7 1940

In Harris County, Texas, where petitioner, a Negro, was indicted and convicted of rape, Negroes constitute over 20 per cent of the population, and almost 10 per cent of the poll-tax payers; a minimum of from three to six thousand of them measure up to the qualifications prescribed by Texas statutes for grand jury service.

What the Records Show

The court clerk, called as a State witness and testifying from court records covering the years 1931 through 1938, showed:

that only 5 of the 384 grand jurors who served during that period were Negroes;

that of 512 persons summoned for grand jury duty only 18 were Negroes;

that of these 18, the names of 13 appeared as the last name on the 16-man jury list, the custom being to select the 12-man grand jury in the order that the names appeared on the list;

that of the 5 Negroes summoned for grand jury service who were not given the number 16, 4 were given numbers between 13 and 16, and 1 was number 6;

that the result of this numbering was that of the 18 Negroes summoned, only 5 ever served, whereas 379 of the 494 white men summoned actually served;

that of 32 grand juries empanelled, only 5 had Negro members, while 27 had none; that of these 5, the same individual served 3 times, so that only 3 individual Negroes served at all;

that there had been no Negroes on any of the grand juries in 1938, the year petitioner was indicted; that there had been none on any of the grand juries in 1937;

that the service of Negroes by years had been: 1931, 1; 1932, 2; 1933, 1; 1934, 1; 1935, none; 1936, 1; 1937, none; 1938, none.

Intentional Exclusion

It is petitioner's contention that his conviction was based on an indictment obtained in violation of the provision of the Fourteenth Amendment that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." And the contention that equal protection was denied him rests on a charge that Negroes were in 1938 and long prior thereto intentionally and systematically excluded from grand jury service solely on account of their race and color.

That a conviction based upon an indictment returned by a jury so selected is a denial of equal protection is well settled, and is not challenged by the State. But both the trial court and the Texas Criminal Court of Appeals were of opinion that the evidence failed to support the charge of racial discrimination.

Equal Protection Is Basic

For that reason the Appellate Court approved the trial court's action in denying petitioner's timely motion to quash the indictment. But the question decided rested upon a charge of denial of equal protection, a basic right protected by the Federal Constitution. And it is therefore, our responsibility to appraise the evidence as it relates to this constitutional right.

It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community. For racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government. We must consider this record in the light of these important principles.

The fact that the written words of a State's laws hold out a promise that no such discrimination will be practiced is not enough. The Fourteenth Amendment requires that equal protection to all must be given—not merely promised.

Capable of Unfairness

Here, the Texas statutory scheme is not in itself unfair; it is capable of being carried out with no racial discrimination whatsoever. But by reason of the wide discretion permissible in the various steps of the plan, it is equally capable of being applied in such a manner as practically to proscribe any group thought by the law's administrators to be undesirable. And from the record before us the conclusion is inescapable that it is the latter application that has prevailed in Harris County.

The statutory scheme is set out in the Texas Code of Criminal Procedure, Articles 333-350. At each term of court, three grand jury commissioners are appointed; at the time they are sworn in, the judge instructs them as to their duties; they are required to take an oath not knowingly to select a grand juror whom they believe unfit or unqualified; they must then retire to a room in the court house, taking the county assessment roll with them; while in that room they must select a grand jury of 16 men from different parts of the county; they must next seal in an envelope the list of the 16 names selected; thirty days before court meets the clerk is required to make a copy of the list and deliver to the sheriff; thereupon the sheriff must summon the jurors.

Exclusion No Accident

Chance and accident alone could hardly have brought about the listing for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service. Nor could chance and accident have been responsible for the combination of circumstances under which a Negro's name, when listed at all, almost invariably appeared as number 16, and under which number 16 was never called for service unless it proved impossible to obtain the required jurors from the first 15 names on the list.

The State argues that the testimony of the commissioners themselves shows that there was no arbitrary or systematic exclusion. And it is true that two of the three commissioners who drew the September, 1938, panel testified to that effect. Both of them admitted that they did not select any Negroes, although the subject was discussed, but both categorically denied that they intentionally, arbitrarily or systematically discriminated against Negro jurors as such. One said that their failure to select Negroes was because they did not know the names of any who were qualified and the other said that he was not personally acquainted with any members of the Negro race.

Compelled to Reverse

This is, at best, the testimony of two individuals who participated in drawing 1 out of the 32 jury panels discussed in the record. But even if their testimony were given the greatest possible effect, and their situation considered typical of that of the 94 commissioners who did not testify, we would still feel compelled to reverse the decision below. DEC 7 1940

What the Fourteenth Amendment prohibits is racial discrimination in the selection of grand juries. Where jury commissioners limit those from whom grand juries are selected to their own personal acquaintance, discrimination can arise from commissioners who know no Negroes as well as from commissioners who know but eliminate them. If there has been discrimination, whether accomplished ingeniously or ingenuously, the conviction cannot stand.

Reversed.

JURIES - 1940

First Woman Serves On Chicago Federal Jury

CHICAGO— (ANP) —Mrs. Lorraine Green, president of the Douglass League of Women Voters of this city, has just concluded six weeks' service as a member of the Federal Grand Jury sitting in Chicago.

It is the first time that a colored woman has sat on a federal jury in Illinois, women having only been admitted to jury service of any sort in Illinois during the past six months. There have been one or two women of the griup serve on petit juries since that time.

Former Judge Albert B. George who has practised law in Chicago for thirty years, says it is the first time a colored person, man or woman, has served on a federal grand jury in this city. It is also believed that this is the first time a Negro woman has sat on a federal grand jury anywhere in America.

There were 12 women and 11 men on the jury with which Mrs Green served. All led in the city's social and civic life, five of them being presidents of League of Women Voters branches. Several of the women were wives of leading Chicago lawyers, a federal jury being one of the few places which under the law a lawyer's wife is able to serve. Mrs. Green is the wife of Civil Service Commissioner Wendell P Green.

WOMAN SITS ON FEDERAL GRAND JURY

Mrs. Lorraine Green of Chicago Ends Six Weeks' Service

CHICAGO. — (ANP) — Mrs. Lorraine Green, president of the Douglass League of Women Voters, of this city, has just concluded six week's service as a member of the Federal Grand Jury sitting in Chicago. It is the first time that a colored woman has sat on a federal jury in Illinois, women having only been admitted to jury service of any sort in Illnois during the past six months.

There have been one or two women of the group serve on petit juries since that time. Former Judge Albert B. George who has practiced law in Chicago for 30 years, says it is the first time a colored person, man or woman, has served on a federal grand jury in this city. It is also believed that this is the first time a Negro woman has set on a federal grand jury anywhere in America.

There were 12 women and 11 men on the jury with which Mrs. Green served. All were leaders in the city's social and civic life, five of them being presidents of League of Women Voters branches. Several of the women were wives of leading Chicago lawyers, a federal jury being one of the few places which under the law a lawyer's wife is able to serve. Mrs. Green is the wife of Civil Service Commissioner Wendell P. Green.

The jury concerned itself principally with rackets; narcotic, liquor and gambling violations. In one way it pioneered, bringing in the first indictment on the child labor provision of the new Wages and Hours law. Colored people, principally women and girls were involved in these cases in which charges had been made against lamp shade and gold accessory manufacturers. Mrs. Green said she found her experience thrilling

Negro Woman On Chicago U. S. Grand Jury For First Time

CHICAGO, Jan. (ANP)—Mrs. Lorraine Green, president of the Douglass League of Women Voters, of this city has just concluded six weeks' srevice as a member of the Federal Grand Jury sitting in Chicago.

It is the first time that a colored woman has sat on a federal jury in Illinois, women having only been admitted to jury service of any sort in Illinois during the past six months. There have been one or two women of the group serve on petite juries since that time.

Former Judge Albert B. George, who has practised law in Chicago for thirty years, says it is the first time a colored person, man or woman, has served on a federal grand jury in this city.

Mrs. W. E. Green Ends Six Weeks' Service on Federal Grand Jury; Was First Negro Woman to Serve

Wife of Commissioner

Mrs. Lorraine Green, president of the Douglass League of Women Voters, of this city, has just concluded six weeks' service as a member of the federal grand jury sitting in Chicago. It is the first time that a colored women has sat on a federal jury in Illinois, women having been admitted to jury servide of any sort in Illinois during the past six months. There have been one or two women of the group to serve on petit juries since that time. Former Judge Albert B. George who has practiced law in Chicago for thirty years, says it is the first time a colored person, man or woman, has served on a federal grand jury in this city. It is also believed that this is the first time a Negro woman has sat on a federal grand jury anywhere in America.

Virginian Defense Sets Jury Precedent

By LEE F. ROGERS

DANVILLE, Va., March 15—M. C Martin, president of a local bank is serving on the jury of the current term of the Corporation court here. He was chosen as the March term of the court opened, and in a number of trials already held he has served as juryman with no objection being raised by either the state or defense counsel.

Court rulings in recent years, backed by decisions handed down by the U. S. Supreme court attacking alleged discrimination in the selection of jurymen especially in cases involving Race men and women charged with offenses, have led to the calling of Race men for jury duty in many sections of the country where such a privilege was denied the Race.

The cases in which Mr. Martin has sat have involved Race defendants. Searchers of the record believe that his presence on a jury here marks the first time a local Race man has seen similar service since the days of Reconstruction.

Call Women, 5 Race Men On Ky. Federal Jury

LEXINGTON, (ANP) — For the first time in the history of the Eastern Kentucky district, five women and five Negroes were among 63 persons selected for jury services at a criminal and civil term of federal district court opening, March 4, at Jackson, Ky.

Negroes selected were Barney Crawford, Loue; Elmer E. Williams, Hazard; Tom Wilson, Jackson; Arthur Grisby, Booneville, and Roy Higgins, Cody.

Tuskegee Graduate On Federal Jury

JASPER, Ala. — Paris B. Swoopes, a graduate of Tuskegee Institute and a prominent Muscle Shoals business man, was recently appointed and is said to be the first colored man to serve on a federal jury in the state.

Mr. Swoopes was summoned along with a white man from Colbert County, to serve as a petit juror during the federal jury session. It is said that Mr. Swoopes so conducted himself as a juror that other jurors and the judge intimated that he would receive special consideration to serve on other occasions. It has been further said that the lone colored juror was not discriminated against.

Mr. Swoopes resides in Sheffield in the heart of the Muscle Shoals. He is exalted ruler of Lodge 819 IBPOEW, a member of the Masonic lodge, vice president of a college organization and active in PTA work.

Man Who Appears For Jury Service Faces Conviction

ASHEVILLE, N. C., March 15—With attorneys, representing the state, described as having told him that they intend to see that he serves some time, Lawrence Sigmon, of this city, will go on trial here before a Superior court judge, March 18, charged with allegedly assaulting a white deputy sheriff and disorderly conduct, all because he insisted on serving on a jury, to which he was called by telephone on June 5, 1939.

Sigmon's trial is being carried to the Superior court by attorneys acting for the local branch of the National Association for the Advancement of Colored People, in conjunction with the association's national office as a result of his second conviction of assault charges here February 28 on faulty warrants.

Appears for Service On Jury, Held for Disorder

ASHEVILLE, N. C. — Lawrence Sigmon, of this city, will go on trial here before a Superior Court Judge, March 18, charged with allegedly assaulting a white deputy sheriff and disorderly conduct all because he insisted on serving on a jury, to which he was called by telephone on June 5, 1939.

Sigmon's trial is being carried to the Superior Court by NAACP branch attorneys acting for the local in conjunction with the association's national office as a result of his second conviction of assault charges here February 28, on faulty warrants.

Durham, N. C., Morning Herald
April 11, 1940

Discrimination Is Charged In Selecting Local Jurors

Committee On Negro Affairs Asks Grand Jury For Thorough Investigation

The Durham committee on Negro affairs, organization devoted to the interests of the colored race, yesterday requested the Durham county grand jury to make a thorough investigation of alleged discrimination of Negroes in the matter of jury service.

Charging that it has been 30 or 40 years since a Negro served on a superior court jury in Durham county, the committee states that it is reliably informed that the names of "no Negro taxpayers are placed in the box from which jurors are drawn."

The charges of alleged discrimination were raised in a letter sent to H. A. Myers, foreman of the grand jury. The communication, signed by R. N. Harris, secretary of the committee, stated that protests have been lodged with the board of county commissioners on several occasions "without tangible results having been obtained."

The text of the letter follows:

"For some time the Negro citizens of Durham have felt that they are being discriminated against in the matter of jury service. As you probably know, it has been 30 or 40 years since a Negro has served on a jury in the superior court of Durham county.

"We have given considerable thought to this matter and wish to call your attention first of all to the fact that we live in a democratic country and that the current practice of discrimination against our people in the matter of jury service is directly opposed to the principles and provisions of the federal and state constitutions. It appears to us that except for the fact that there is a conscious and planned effort by certain county officials to eliminate Negroes from jury service in this county, the name of some Negro would have been drawn from the box within the last 20 odd years.

"Based on reliable information, we have come to believe that the names of no Negro tax payers are placed in the box from which jurors are drawn for each term of court in the county and are, therefore, asking that the grand jury make a thorough investigation of the matter."

SPANKED BY COURT FOR TRYING TO BE JUROR

ASHEVILLE, N. C.—Lawrence Sigmon received a suspended sentence here April 16 on a charge of disorderly conduct, which grew out of the fact that he answered a summons for jury service June 5, 1939.

When he reported for service and applied to the sheriff's office (since the court was not in session) he was carried into an elevator along with several deputy sheriffs, the car was stopped between floors, and Sigmon was severely beaten. He says he was told that he was being made "an example for all other Asheville Negroes who might have the audacity to report for jury service."

Sigmon later was arrested and charged with disorderly conduct, but he says he was offered his freedom if he would agree not to press charges. He refused and was convicted. The conviction was appealed, and on April 16, he was given a suspended sentence for disorderly conduct and the other charges dropped.

The N. A. A. C. P. conferred with the Department of Justice because of the intimidation of Sigmon as a prospective juror, and the department has notified the NAACP that the investigation of the FBI is complete and the case is in the hands of the prosecuting attorney in Asheville.

Suspended Term For "Juror"

ASHEVILLE, N. C.— (SNS) — Lawrence Sigmon received a suspended sentence here April 16 on a charge of disorderly conduct, which grew out of the fact that he answered a summons for jury service June 5, 1939.

When he reported for service and applied to the sheriff's office (since the court was not in session) he was carried into an elevator along with several deputy sheriffs, the car was stopped between floors,

Charleston, S. C. News & Courier
November 29, 1940

Black's Decision

To The News and Courier:

When the court packing bill was before congress I wrote a letter which was printed in several Southern papers, warning the Southern people of what would likely happen to them should the bill become a law, or should Mr. Roosevelt accomplish the same purpose by appointments on the court in the event of the death or retirement of its members. I warned them that certain organizations would contest the constitutionality of all of their social and political laws in the federal courts, and that they would be held unconstitutional, as they probably are under a strict construction of the Fourteenth amendment. And yet the South, in utter disregard of its most vital interests, voted almost solidly to continue Mr. Roosevelt and the New Deal in power.

This prophecy is now beginning to materialize. In a decision yesterday, which is the third of its kind, by Justice Black, the reformed and now repentent Ku Kluxer, the supreme court indicated its determination to break down all laws of the Southern states designed to safeguard white supremacy, and their social, political, and economic well-being. A negro who had been convicted of raping the young wife of a white business man in Harris county, Texas, was set free by Black's decision of the court on the ground that the county discriminated against negroes in selecting grand juries, and according to newspaper reports this fiend is now free from further prosecution because the time limit for a reindictment has expired. Black's charge of discrimination is a mere inference on his part and that of the court as there is no law of the state of Texas that makes or requires any discrimination between the races in the selection of juries, and as a matter of fact negroes have served upon grand juries in Harris county.

This is, indeed, a shocking and disquieting decision, and will encourage the vile crime for which this negro was convicted and jeopardizes the safety and the security of every white woman in the South.

The Southern people will not, however, be heard to complain isasmuch as they invited this situation and these results by supporting the third term candidate of the New Deal.

ALEXANDER SIDNEY LANIER.
Washington.

WHITES ONLY IN PANEL, CLAIM

JEFFERSON CITY, Mo., Oct. 31—(ANP)—Because no Negroes were included in the panel for the trial of a damage suit by Miss Lucille Bluford, Kansas City Call managing editor, the legality of the jury panel was challenged in a motion filed by her counsel.

The case docketed for trial Tuesday was based on a suit for $10,000 damages against S. W. Canada, registrar of the University of Misouri. It grew out of the refusal of Canada to permit Miss Bluford to register in August, 1939, for graduate work in the journalism school of the university a Columbia.

The motion challenging the jury panel pointed out that all members of the panel were white. It charged that Negroes residing in the Central Division of the Western District of Missouri, who were qualified for jury service, had been excluded from the panel, "solely because of race or color, pursuant to a systematic course of race discrimination."

Failure to include Negroes in the panel violated the equal protection clauses of the Fourteenth Amendment to the United States Constitution, it was asserted.

Attorneys for the plaintif include Sidney R. Redmond, of St. Louis, and Charles H. Houston, of Washington, counsel for the National Association for the Advancement of Colored People.